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Nos. 577-581, 585-587

Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., PETITIONER,
v.
RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA, RESPONDENT.

A. B. DORE, PETITIONER,
v.
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

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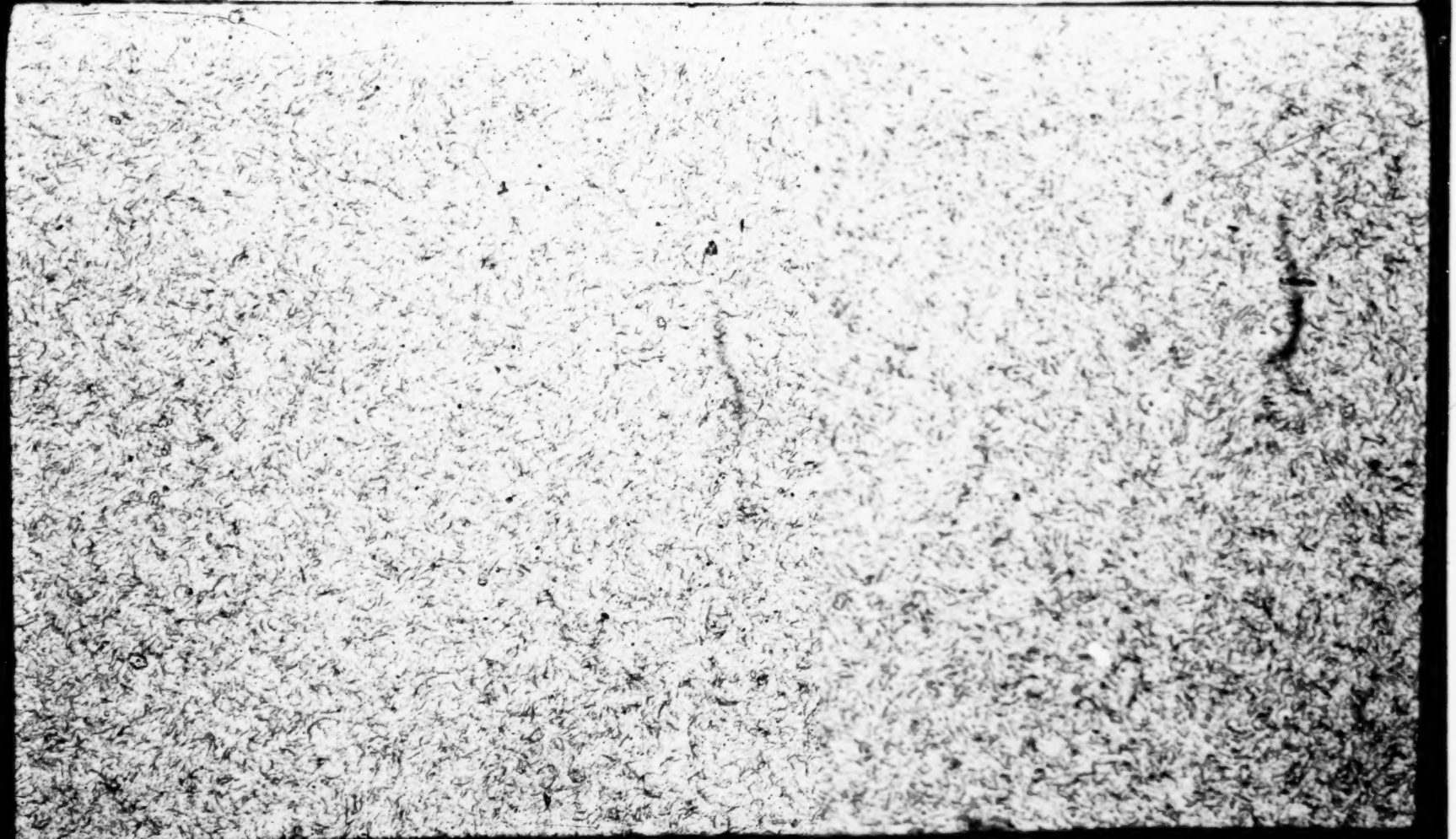

SUBJECT INDEX

		PAGE
I.	The Opinions of the Courts Below	1-2
II.	Jurisdiction	2
III.	Statement of the Case	2-8
IV.	Questions Presented	8
V.	Statutes Involved	8-9
VI.	Specification of Errors	9-11
VII.	Argument:	
	Summary of the Argument	11-73
	Point A.—Neither R. S. §3224 nor Sec. 21(a) of the Agricultural Adjustment Act, as amended, properly interpreted, bars injunctive relief in these cases.	
	Point B.—Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of any adequate remedy at law.	
	Point C.—If R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, forbid the granting of an injunction in these cases they are unconstitutional.	
	Point D.—The summary proceedings provided in Secs. 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.	

PAGE

Point E.—The Agricultural Adjustment Act, as amended, is unconstitutional.

(a) The Act is an attempt to regulate the price at which petitioners buy and sell rice in intrastate commerce.

(b) The Act is an attempt to control the production of agricultural commodities within the several States.

(c) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

(d) The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

Point A—Inapplicability of R. S. §3224 and Sec. 21(a) of the Agricultural Act, as amended 12-16

Point B—Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of their remedy at law 17-29

Point C—Unconstitutionality of R. S. §3224 and Sec. 21(d) of the Agricultural Adjustment Act, as amended, if they forbid injunctions in these cases 30-37

Point D—If injunctions in these cases may be constitutionally forbidden by Congress, then the statutory pro-

PAGE

visions for the summary collection of the taxes are unconstitutional ... 37-39

Point E—The Agricultural Adjustment Act, as amended, is unconstitutional ... 39-73

Conclusion ... 73-74

Appendix A—R. S. §3224 ... 76-81

Appendix B—Provisions of Title 26, U. S. C., Dealing with Collection of Taxes by Distraint ... 82-87

Appendix C—Penalty Provisions ... 82-90

Appendix D—Agricultural Adjustment Act, as amended, as of August 24, 1935 ... 91-120

Appendix E—Excerpts Relating to "Passing On" of Taxes from Economic Authorities ... 121-140

Appendix F—Regulation of Rice under Agricultural Adjustment Act ... 141-145

AUTHORITIES

	PAGE
Anderson v. Pacific Coast Steamship Company (1912), 225 U. S. 187, 199	14
Armour & Company v. Harrison (August 1, 1935, D. C. N. D. Ill., not yet reported)	15
Atlantic Coast Line v. Daughton (1923), 262 U. S. 413	29
Brinkerhoff-Farris Trust & Savings Company v. Hill (1930), 281 U. S. 673	32
Bull v. United States (1935), 295 U. S. 247	27
Burnet v. Houston (1931), 283 U. S. 223	26
Butler et al. v. United States (C. C. A. 1st. 1935), 78 F. (2) 1	42
Carpenter v. Shaw (1930), 280 U. S. 363, 369	38
Chastleton Corp. v. Sinclair (1924), 264 U. S. 543	46
Child Labor Tax Case (1922), 259 U. S. 20	42, 48, 54
Cole v. LaGrange (1885), 113 U. S. 1	52
Crowell v. Benson (1932), 285 U. S. 22, 56	24, 35
Dodge v. Osborn (1916), 240 U. S. 118, 122	15
Ex Parte Young (1908), 209 U. S. 123, 146	29
F. G. Vogt & Sons, Inc. v. Rothensies (July 17, 1935), 11 Fed. Supp. 225, 230	15, 64
Fidelity & Deposit Co. v. Tafoya (1926), 270 U. S. 426	32
Field v. Clark (1892), 143 U. S. 649, 695	46, 67
Graham & Foster v. Goodcell (1931), 288 U. S. 409, 430, 431	32
Gregg Dyeing Company v. Query (1932), 286 U. S. 472, 479	43

PAGE
Hammer v. Dagenhart (1918), 247 U. S. 251 42
Hampton & Company v. United States (1928), 276 U. S. 394 ..... 68, 69, 70
Hamilton v. Kentucky Distilleries Co. (1919), 251 U. S. 146, 156 31
Hamilton Shoe Company v. Wolf Bros. (1916), 240 U. S. 251, 260 22
Hill v. Wallace (1922), 259 U. S. 44, 62 ..... 15, 30, 42, 48

Indian Motorcycle Company v. United States (1931), 283 U. S. 570, 574 26
International Harvester Company v. Kentucky (1914), 234 U. S. 216, 223 21

Julian v. Central Trust Company (1904), 193 U. S. 93, 112 34

Kansas v. Colorado (1907), 206 U. S. 46, 89 ..... 49, 54
Kline v. Burk (1922), 260 U. S. 226 36

Lipke v. Lederer (1922), 259 U. S. 557, 562 38
Loan Association v. Topeka (1847), 20 Wall. 655 ..... 52, 55
Louisville Cement Co. v. Interstate Commerce Commission (1924), 264 U. S. 638, 644 16

Martin v. Hunter's Lessee (1816), 1 Wheat. 304, 334 36
Massachusetts v. Mellon (1923), 262 U. S. 447 ..... 45, 57
Michaelson v. United States (1924), 226 U. S. 42 ..... 16, 34
Miller v. Standard Nut Margarine Company (1932), 284 U. S. 498, 509 ..... 15, 30
Murray's Lessee et al. v. Hoboken Land & Improvement Company (1855), 18 How. 272, 284 35

Ohio Oil Company v. Conway (1929), 279 U. S. 813 28

PAGE

Panama Railroad Company v. Johnson (1924), 264 U. S. 375 16
Panama Refining Co. v. Ryan (1935), 293 U. S. 388 70
Parkersburg v. Brown (1882), 106 U. S. 487 52
Penn v. Glenn (April 13, 1935), 10 Fed. Supp., 483, 484 15
Phillips v. Commissioner (1931), 283 U. S. 589, 596 37

Railroad Retirement Board v. Alton Railroad Company (1835), 295 U. S. 330, 350 53
Raymond v. Chicago Union Traction Company (1907), 207 U. S. 20 29

Schechter Poultry Corp. v. United States (1935), 295 U. S. 495 ..... 42, 47, 57, 70
Seattle Trust Company v. Roberge (1928), 278 U. S. 116 68
Stewart Dry Goods Company v. Lewis (1932), 287 U. S. 9 29

Truax v. Corrigan (1921), 257 U. S. 312 30

Union Pacific Railroad v. Weld County (1917), 247 U. S. 282 29
United States of America v. Butler 39
United States v. Jefferson Electric Manufacturing Company (1934), 291 U. S. 386, 402 ..... 25, 26, 27, 29
United States ex rel. Miles Planting & Manufacturing Company v. Carlisle, 5 App. D. C. 138 52
United States v. Realty Company (1896), 163 U. S. 427 53

Veazie Bank v. Fenno (1869), 8 Wall. 533, 541 54

PAGE

Wallace v. Hines (1920), 253 U. S. 66 29
Ward v. Love County (1920), 253 U. S. 17..... 38
West v. Chesapeake & Potomac Tel. Co. (June 3, 1935), not yet reported 65
Williams v. Standard Oil Company (1928), 278 U. S. 235 ..... 43, 51
Wilson v. Illinois Southern Railroad (1924), 263 U. S. 574 29

A. A. A., Sec. 21(a) 13, 15, 18, 24, 31, 38

XIV Encyclopedia of the Social Sciences, 537 19

49 Harvard Law Review (1935) 13

R. S. §3224, 14 Stat. 475; 14 Stat. 152..... 13, 31, 38

U. S. Constitution, Art. III, Sec. 1 33
U. S. Constitution, Art. III, Sec. 2 ..... 33, 36
U. S. Constitution, Secs. 115 to 131, Title 26 ..... 37, 39, 74

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I.

The Opinions of the Courts Below.

The District Court wrote no opinion and the Circuit Court of Appeals has not yet rendered any decision on the merits of the appeal. The *per curiam*

opinion of the court denying the injunction pending appeal is found on page 98* of the Record.

II.

Jurisdiction.

(1) Jurisdiction of these causes is conferred upon this Honorable Court by *Judicial Code, Section* 240, as amended; *United States Code, Title* 28, *Section* 347.

(2) The date of the judgments of the trial court to be reviewed is October 28, 1935 (R. 79), the date of the order of the Circuit Court of Appeals denying the injunctions pending appeal sought to be reviewed is November 5, 1935. (R. 98.)

III.

Statement of the Case.

October 25, 1935, petitioners filed their bills of complaint against respondent, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana (R. 2), alleging the passage of the so-called Agricultural Adjustment Act, as amended, setting up pertinent provisions of the Act and alleging that the Act was, for various reasons, unconstitutional. (R. 3-15.) Petitioners then alleged that they were subject, as millers of rice, to the provisions of said Act, and that under

*Record references throughout are to the Record in No. 577, Rickert Rice Mills, Inc., Petitioner, v. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent. The records in all of the cases are identical except for certain inconsequential differences.

such provisions they were liable for a tax on rice processed by them; that the amount of said tax for the month of September, 1935, was about to become due, and that unless restrained the respondent would resort to the various summary procedures provided by statute for collecting said tax from petitioners unless such tax were paid. They alleged that from month to month thereafter additional taxes would become due, and that unless they were paid respondent would take similar summary action for their collection. (R. 15.) Petitioners alleged that they would be irreparably damaged by such action of the respondent for various reasons set out, and that if the tax were once paid or collected it would be irretrievably lost to petitioners. (R. 16.) Petitioners alleged that by the provisions of Section 21(d) of the Act as amended they were deprived of any adequate remedy at law to recover any taxes paid in the event the law were to be held unconstitutional. It was alleged that, apart from any question of the inherent impossibility of proving whether a tax such as that imposed by the Act was or was not "passed on," the rice milling business was, and of necessity had to be, operated in such manner that it was and would be impossible, with respect to any given lot of rice, to determine even whether such rice had been processed at a profit or a loss, much less to prove whether the tax with respect to such rice had or had not been "passed on." Rice millers, it was alleged, purchase rough rice from farmers at a price which is fixed by the competitive bidding

of the various rice millers. It is bought by "lots," each of which is given a number, and is purchased in large quantities and is kept on an average of several months before the rice and rice products made from it are sold. Ordinarily a major factor in the rough rice market is the clean rice market, but many other elements are involved such as the supply and demand for rough rice, the composite pessimism or optimism of rough rice buyers, the number of buyers in the field at a given time, etc. Individual millers have no power to arbitrarily depress the price paid for rough rice, but must pay the market price fixed under these conditions. The miller likewise sells the clean rice and rice products made from the rough rice on a competitive market in which he not only competes with other millers, but also with other commodities such as wheat, potatoes, beans, and other food products capable of being substituted for rice. If the price for rice is pushed too high, consumers will shift to other commodities which can be substituted for it, and the miller therefore cannot arbitrarily raise the price at which clean rice and rice products are sold for the purpose of passing on the tax or for any other purpose. Furthermore, when rough rice is milled it produces many grades of rice and products thereof, such as extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran and hulls, all of which commodities have varying values and are used for different purposes. Some sell for more than the cost of the rough rice from which they are pro-

duced, and others sell for less. There is no accurate way of assigning any definite proportion of the price paid for the rough rice to the various grades of rice and rice products made from it. In addition, the clean rice processed from a given lot of rough rice is not ordinarily sold by itself, but is mixed with clean rice produced from other lots of rough rice. Rice is sold against samples which are made up by millers at the beginning of each season, and when a sale is made against such sample, a mixture is made of clean rice from various lots of rough rice in such manner as to match the particular sample. The rice when so mixed is sold at an aggregate price, and there is no way to accurately determine what part of the total price received for the mixture should be allocated to the particular rice processed from the various lots of rough rice. The milling cost of any given lot of rough rice is likewise, under practical operations, impossible of determination, because differing grades of rice and even differing lots of the same grade, require different milling procedures because of differences in the sizes and shapes of the grains, the thickness of the grains, the moisture content, conditions under which the rice was harvested, etc. In practical operations the milling operations have to be changed quickly from time to time as changes are made from one lot of rough rice to another. Furthermore, the amount of rice which is milled on a given day likewise affects the cost. For these reasons, petitioners alleged, even if it were otherwise possible to make the proof required by

Section 21(d), they could not accurately prove even whether they had made a profit or a loss on any given transaction, but could only tell at the end of the season whether the aggregate of all operations had resulted in a profit or loss. (R. 16-21.) Petitioners then alleged that Section 21(a) of the Act purported to forbid the granting of an injunction to restrain the collection of the taxes involved and that it, taken with the impossible burden of proof set up in Section 21(d) of the Act, would deprive petitioners of all right to test the validity of such taxes unless the relief prayed for were granted. (R. 22.) Petitioners alleged, however, that said Section 21(a) did not apply, and was not intended to apply, under the circumstances set forth in petitioners' bills of complaint, but that, if it were held to so apply, it was in contravention of the Fifth Amendment to the Constitution of the United States, in that it would result in unconstitutional taxes being forcibly collected from petitioners without petitioners having any remedy at any time to prevent the collection of the taxes or to test the constitutionality of the taxes. (R. 23.) Further allegations were that a multiplicity of claims and suits would be required to enforce petitioners' rights even if they were able to make the proof required by Section 21(d), and that in any event an actual refund of the taxes, if paid, could not be had, because Congress had made no appropriation therefor, and because of the tremendous sums involved there was no probability that Congress would make such appropriations. (R.

23.) Petitioners offered to give such security as the court might require and made the usual prayer for injunctive relief. (R. 24.) Petitioners' bills were duly verified, and there was appended to petitioners' bills of complaint as an exhibit the administrative rulings relating to the 1935 Southern Rice Production Adjustment program (R. 27), and the standard form of contract between the Secretary of Agriculture and rice producers. (R. 38.)

Respondent filed a return to the rule to show cause why a preliminary injunction should not issue which contained a blanket, though not specific, denial of the allegations of plaintiffs' bills of complaint. (R. 54.) Respondent likewise filed a motion to dismiss for want of jurisdiction. (R. 56.) The causes were consolidated for hearing in the trial court (R. 58), and on October 28th the District Judge granted respondent's motion in all the cases to dismiss them for want of jurisdiction, and entered an order to that effect. (R. 78.) Petitioners then moved for an injunction pending appeal which was denied by the court. (R. 79.) Petitioners duly filed their assignments of errors and motion for appeal, which was allowed. (R. 80, 81.) After the filing of their appeal bond (R. 82), their appeals were duly perfected to the Circuit Court of Appeals for the Fifth Circuit on November 4, 1935. (R. 98.) On the same day petitioners filed in that court a motion for a preliminary injunction pending appeal (R. 86), which was, on November 5, 1935, denied in a *per curiam* opinion which held that petitioners had a

"remedy" at law and that the provisions of the Agricultural Adjustment Act, as amended, deprived the court of jurisdiction to grant injunctive relief. (R. 97.) November 11, 1935, petitioners filed herein their petitions for certiorari, and briefs in support thereof, as well as motions for injunctions to preserve the *status quo* pending the proceedings in this Honorable Court. The petitions for certiorari were granted November 25, 1935, and on the same date the motions for injunctive relief were granted.

IV.

Questions Presented.

(1) Whether the Agricultural Adjustment Act, as amended on August 24, 1935, is constitutional.

(2) Whether, under the circumstances of these cases, the petitioners are entitled to injunctive relief.

V.

Statutes Involved.

R. S. §3224 and Sec. 21 of the Agricultural Adjustment Act as amended are set out in Appendix A. Secs. 115 to 131, Title 26, U. S. C., as amended, are set out in Appendix B. Sec. 19(b) of the Agricultural Adjustment Act, as amended, and Sec. 1114 of the 1926 Revenue Act are set out in Appendix C. All other pertinent provisions of the Act of Congress of May 12, 1933, c. 25, 48 Stat. 31, known as the Agricultural Adjustment Act, as amended on August

24, 1935, are set out in Appendix D. For the convenience of the court there is separately bound and filed Annex A to the brief which contains a compilation of the Agricultural Adjustment Act, as amended, showing clearly the changes made by the amendment of August 24, 1935.

VI.

Specification of Errors.

(1) The District Court erred in holding that it was without jurisdiction to hear petitioners' cases because of the provisions of R. S. §3224, and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

(2) The District Court erred in refusing to grant petitioners a preliminary injunction pending a hearing on the merits.

(3) The District Court and Circuit Court of Appeals erred in holding that said Sec. 21(a) did not deprive petitioners of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, in view of the allegations in the bills, admitted by the motion to dismiss, that petitioners were without remedy at law to recover the taxes paid if they were held to be illegal.

(4) The District Court and the Circuit Court of Appeals erred in holding that if said Sec. 21(a) forbade the granting of an injunction restraining the collection of the tax, and if petitioners had no

remedy at law to recover the same, if it be held they were illegally collected, respondent could nevertheless employ the summary proceedings for immediate collection of the tax provided in Secs. 115 to 131, Title 26, U. S. C., as amended, without depriving petitioners of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

(5) The District Court and the Circuit Court erred in holding that either or both R. S. §3224, and Sec. 21(a) of said Act prevented the granting of an injunction under the special and extraordinary circumstances presented by these cases.

(6) The Circuit Court of Appeals erred in holding that petitioners had "a remedy at law to recover back any taxes illegally exacted."

(7) The Circuit Court of Appeals erred in refusing to grant petitioners an injunction to preserve the *status quo* pending their appeal from the order discussing the bills.

(8) The Circuit Court of Appeals erred in refusing to grant petitioners an injunction pending the appeal for the purpose of preserving the appellate jurisdiction of that court.

(9) The Circuit Court of Appeals erred in holding either or both R. S. §3224, and Sec. 21(a) of said Act "deprived the court of jurisdiction to grant injunctive relief."

(10) The District Court and Circuit Court of Appeals erred in not holding the Agricultural Adjustment Act, as amended, to be violative of Art.

1, Sec. 1, Amendments Five and Ten of the Constitution of the United States.

Petitioners expect to rely on all of the foregoing specifications of error.

VII.

ARGUMENT

Summary of the Argument.

POINT A.

Neither R. S. §3224 nor Sec. 21(a) of the Agricultural Adjustment Act, as amended, properly interpreted, bars injunctive relief in these cases.

POINT B.

Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of any adequate remedy at law.

POINT C.

If R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, forbid the granting of an injunction in these cases they are unconstitutional.

POINT D.

The summary proceedings provided in Secs. 115 to 131, Title 26, U. S. C., as amended, are unconstitutional when applied to a taxpayer who has been

deprived of both legal and equitable remedies to test the constitutionality of the tax thus sought to be collected.

POINT E.

The Agricultural Adjustment Act, as amended, is unconstitutional.

(a) The Act is an attempt to regulate the price at which petitioners buy and sell rice in intrastate commerce.

(b) The Act is an attempt to control the production of agricultural commodities within the several States.

(c) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

(d) The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

POINT A.

Inapplicability of R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended.

In order to make clear that R. S. §3224 and Sec. 21(a) of the Agricultural Adjustment Act, as amended, are for all practical purposes identical in wording and in effect we here set them out side by side:

R. S. §3224.	A. A. A. Sec. 21(a)
No suit.	*No suit,* action or proceeding (including probate, administration, receivership, and bankruptcy proceedings)
shall be maintained in any court	*shall be* brought or *maintained in any court*
for the purpose of restraining the assessment or collection of any tax.	if such suit, action or proceeding is *for the purpose* or has the effect (1) *of* preventing or *restraining the assessment or collection of any tax* imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment. * * *

R. S. §3224 was originally passed in 1867 (*14 Stat. 475*) as an amendment to Sec. 19 of the Internal Revenue Act of July 13, 1866 (*14* Stat. *152*), which set up the administrative and legal machinery for the recovery of taxes illegally paid. The legislative history of this amendment sheds no light upon the congressional purpose in passing it. 49 *Harvard Law Review* 109 (1935). However, when the Act of 1866, thus amended, is read as a whole, the congressional intent would seem perfectly clear. Having set up what appeared to be complete and adequate machinery for the protection of taxpayers against illegal exactions of taxes, Congress very

properly provided that, under such circumstances, injunctions should not issue to restrain the collection of such taxes. With this appearing on the face of the Act, it is submitted that it would be improper to attribute to Congress the additional intent that injunctions should not issue to restrain the collection of an illegal tax, even in those extraordinary and unusual cases where the administrative and legal machinery for recovery of such taxes set up in the Act were wholly inadequate to protect the taxpayer from irreparable injury. Being an integral part of the system of "corrective justice" in the collection of taxes, it should be properly construed to apply only to the normal situation where the system is successfully working as a "corrective system of justice" and as not applicable in the unusual case where that system breaks down Any other interpretation of the provision would entirely ignore the part it was intended to play in this system and would give to it an effect and meaning wholly disassociated from its proper setting The fact that in rearranging the statutes the codifiers have separated R. S. §3224 from the section of the Act which it originally amended of course in no wise alters its scope or purpose nor does it call for any different interpretation from that which would have been originally required. *Anderson v. Pacific Coast Steamship Company* (1912), 225 U. S. 187, 199. This court has consistently held that the prohibition of the section is not absolute, but that courts have jurisdiction to grant injunctions against the collection of taxes

when special and extraordinary circumstances exist. The most recent expression of the court on the question is found in *Miller v. Standard Nut Margarine Company* (1932), 284 U. S. 498, 509, where the court said:

> "The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. * * * It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable."

To the same effect is *Hill v. Wallace* (1922), 259 U. S. 44, 62. *cf. Dodge v. Osborn* (1916), 240 U. S. 118, 122.

Sec. 21(a) was included in the amendments of August 24, 1935, to the Act after numerous suits to restrain the collection of the tax had been filed throughout the country in which the contention was being made, and the courts were holding, that the supposed tax was in fact no tax at all, but a penalty. *e. g., Penn v. Glenn* (April 13, 1935), 10 Fed. Supp. 483, 484; *F. G. Vogt & Sons, Inc., v. Rothensies* (July 17, 1935), 11 Fed. Supp. 225, 230; *Armour & Company v. Harrison* (August 1, 1935, D. C. N. D. Ill., not yet reported). Under these circumstances it is plain that the purpose of Congress in including this section in the amendments was to

make certain its intention that the principle of R. S. §3224 should apply to suits brought to restrain collection of these particular taxes. Having expressed its intention in words practically identical with those used in R. S. §3224, the amendment must be interpreted in the light of the well settled rule that, when a statute is reenacted in the same words as a previous statute which has received a judicial interpretation, the reenacted statute includes the previous judicial interpretation. *Louisville Cement Co. v. Interstate Commerce Commission* (1918), 246 U. S. 638, 644. Had any different meaning been intended Congress could very easily and in few words have expressed it. Likewise both R. S. §3224 and Sec. 21(a) of the Act, as amended, must be construed in the light of the well settled principle that a statute, susceptible of two constructions, should be construed in such a way as not to raise doubts as to its constitutionality. *Panama Railroad Company v. Johnson* (1924), 264 U. S. 375; *Michaelson v. United States* (1924), 266 U. S. 42. As will be pointed out hereafter, to interpret these statutes, or either of them, in the manner contended for by the Government would raise grave doubts as to its or their constitutionality.

It is therefore submitted that these statutes should be construed as not forbidding injunctive relief in *all* cases.

POINT B.

Sec. 21(d) of the Agricultural Adjustment Act, as amended, deprives petitioners of their remedy at law.

Sec. 21(d)* of the Act, as amended, forbids the return of any taxes illegally collected under the Act unless the taxpayer proves, to the satisfaction of the Commissioner, the following four things:

> (1) That neither the taxpayer nor any person directly or indirectly under his control has, directly or indirectly, included the amount of the tax or any part thereof in the price of the commodity with respect to which it was imposed, or of any article processed from the commodity with respect to which it was imposed, or
>
> (2) Passed on any part of such amount to the vendee or to any other person in any manner, or
>
> (3) Included any part of such amount in the charge or fee for processing, and
>
> (4) That the price paid by the taxpayer for the commodity was not reduced by any part of the tax paid.

It is contended by the Government that this provision was put in the Act by Congress on the assumption that, generally speaking, the taxes imposed by the Act would be, in whole or in part, shifted by the processors to the farmer or to the purchaser of the processed article, and that to permit a processor who had in fact passed on the tax to recover it back would result in unjust enrichment of such

*Printed in Appendix A.

processor. The fact is, however, that the plain and unambiguous language of Sec. 21(d) reflects a purpose to *unjustly enrich the Government* rather than to prevent unjust enrichment of a taxpayer. The language is plain—"no recovery * * * shall be * * * allowed of * * * *any* amount of *any* tax, penalty, or interest * * *" unless the taxpayer proves that he did not pass on "*any part* of such amount" to the vendee or to any other person in any manner, and that he did not reduce the price paid for the article to be processed "by *any part* of such amount." Thus, so far as recovery of any tax paid is concerned, the processor who has passed on 1% of the tax and himself absorbed 99% of the tax, and can prove it, is entitled to recover exactly the same amount of the tax paid by him as the processor who has passed on the entire amount of the tax, to wit, nothing. Furthermore, there is no provision for the recovery by farmers or consumers of any part of the tax actually borne by them even if they were able to prove the fact. Thus, if the tax is collected and the law later be held unconstitutional, the Government is unjustly enriched by the total amount of all the processing taxes paid in excess of those amounts which the processors can prove were *wholly* borne by them. This is true entirely apart from any question of the ability of processors to factually prove whether they have passed on all or any part of the tax.

Turning now to the possibility of making the proof required by the statute as a condition prece-

dent to a return of the tax, we find that Congress has enacted into law an economic *theory* which has been the subject of acrimonious debate among scholars for more than a century. Despite all this study of the question of whether a tax, such as is here involved, is borne by the taxpayer or is pased on by him to others, no one has yet been able to make *factual* proof or disproof of the theory. The theory is supported only by arbitrary assumptions, hypotheses insusceptible of proof, debatable inferences from observed phenomena and the like, and the amount of verified knowledge with reference to the question has been recently characterized as "disappointingly slight." *XIV Encyclopedia of the Social Sciences* 537. Further, the conclusions reached with reference to any particular tax by application of any of the theories apply only to the long run, and not to short periods, and even then only the broad effect and not any specific effect of the tax is estimated. The debatable character of the theory as well as the impossibility of proving or disproving it in a court of law is illustrated by the excerpts from leading textbooks on economics contained in Appendix E. In this appendix there is also included quotations from official publications of the Government clearly indicating the impossibility of proving where the ultimate burden of tax on any given transaction actually falls.

The impossibility of making the proof required by Sec. 21(d) of the Act, as amended, becomes even more apparent when viewed in light of the particu-

lar cases before the court. First, it is to be observed that the tax here is not measured by the price at which the product is purchased or sold, but, on the contrary, bears no mathematical relation to those figures whatever. It is based solely on the number of units of rice passing through the particular mill regardless of the varying prices for which the rice is bought and sold. It becomes a part of the miller's expenses of operation just as does his income tax, franchise tax, insurance, salaries, general overhead, etc. It becomes inseparably commingled with all other costs of doing business and is no more capable of separate consideration to determine its effect on the purchase price or the sale price of the article processed than would be any other item of operating expense. The price which the miller pays to the farmer for rough rice and the price at which he sells the clean rice and rice products processed from it is not controlled by the miller's cost of doing business (and the cost of doing the business is, of course, not the same for all millers) but is fixed and controlled by multifold and complex economic factors both tangible and intangible. The market on which the miller buys, as well as the market on which he sells after processing the product, as is the case with processors of wheat, corn, hogs, etc., fluctuates from day to day and there is no way for him to know, much less prove, why he has to pay $3.20 a barrel for rough rice one week and has only to pay $2.25 per barrel for the same type and grade of rough rice the next week. He is equally helpless to prove why

it is that he is able to sell clean rice for only $4.10 per pocket (100 pounds) one week, while the next week he is able to get $5.05. Not only is the rice market presently affected by the operation of what might be termed "normal" economic factors, but it is likewise influenced by the continual efforts of the present Administration to artificially control as much as possible the entire economic structure of the country. Despite the operation of these complex economic factors upon the price the miller pays for rough rice, the miller is required, as a condition precedent to the recovery of the tax paid by him, to prove that the price was not lowered *because* of the tax, and must also prove that, when he sold the clean rice and rice products processed from it, the price was not increased *because* of the tax despite the fact that the market on which he sold was likewise affected by these various economic factors. He must therefore prove that the price paid by him for rough rice was not lowered and the price received by him for clean rice and rice products was not raised because of the influence of *all or any of the other factors involved,* however impalpable. In short, he must prove *what the market would have been had there been no tax.* That the making of such proof "is a problem that no human ingenuity could solve" was held by this court in *International Harvester Company v. Kentucky* (1914), 234 U. S. 216, 223, where it was further said that:

> "The reason is not the general uncertainties of a jury trial, but that the elements necessary

> to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind. The very community, the intensity of whose wish relatively to its other competing desires determines the price that it would give, has to be supposed differently organized and subject to other influences than those under which it acts. * * *
>
> "* * * To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

An analogous situation arises where a trademark has been infringed and the question arises as to how much of the sales price received by the infringer is attributable to the use of the trademark and how much to the intrinsic value of the object sold. In *Hamilton Shoe Company v. Wolf Bros.* (1916), 240 U. S. 251, 260, this court held that in such a case it would, in the very nature of things, be impossible to ascertain to what extent the infringer could have effected sales and at what prices except for the use of the trademark. The same principle is applicable here—it is inherently impossible, in the circumstances of this case, for petitioners, or any other rice miller, to ascertain or prove to what extent they could have "effected sales and at what

prices" except for the existence of the processing tax.

The situation involved in these cases is many times more complex than that in the case just referred to. The manner in which the rice milling business is conducted is summarized in the "Statement of the Case," *ante,* pp. 3-6, and is set out in great detail in the record. (R. 16-21, 60-75.) As is there explained, the miller is unable to accurately tell whether he has made a profit or a loss with regard to any given lot of rice. However, the tax is levied upon each lot of rice, based upon its weight at the time it reaches the mill, and in order to recover the tax paid on such rice, under the provisions of Sec. 21(d), the miller must prove that he did not "pass on" the tax with respect to that *particular lot of rice.* Since he cannot even determine whether he made a profit or a loss on the particular transaction, it is manifestly impossible for him to know, much less prove, whether he has passed on the tax. However, even if he were able to prove exactly the amount of profit he made on each transaction, he would still have proved nothing but that. For all that he, or anyone else, could know, he might have been able to sell the particular lot of rice for exactly the same price, even if there had been no tax, and he might have been able to purchase it for exactly the same price had there been no tax. On the face of it such matters are incapable of proof or even a sound guess.*

*The administrative difficulties of handling the claims for refunds even if proof could in some manner be made would be practically insuperable. It would be necessary to trace through from farmer to purchaser each one of the many millions of units of farm products processed throughout the United States. Even with a tremendous organization the task of examining and determining the facts with reference to each particular unit would probably run well into the next century.

In still another particular Sec. 21(d) fails to provide any ultimate remedy for the *judicial determination* of petitioners' constitutional rights. In any proceeding in court involving the tax sought to be recovered the court is, by this section, limited to the record made before the Commissioner, and petitioners may introduce no new or different evidence, and are likewise deprived of their right to a trial by a jury. Thus, instead of a judicial review of petitioners' constitutional rights, the Act substitutes a review by a single administrative agent of the Government. *Crowell v. Benson* (1932), 285 U. S. 22, 56.

To argue this point further would be to labor the obvious, and it is necessary only to notice one or two further matters. It is suggested that, since conversion factors have been fixed by the Secretary of the Treasury for use in determining the amount of refunds (drawbacks) to be made to millers with respect to articles processed from rice which are exported or sold to charitable organizations and the like, petitoners should be able to prove whether they have passed on the tax. (Brief in Opposition, p. 12.) This evidences a misconception of the purpose of these conversion factors. The Act provides that, when clean rice is exported or sold to certain charitable organizations, the processing tax paid on that particular rice shall be refunded to the miller. The tax, however, is computed on the amount of rough rice processed, being 1c per pound of rough rice milled. One pound of rough rice, however, does

not yield one pound of clean rice, there being a certain amount of loss by way of by-products and otherwise. Since the refund or drawback to the miller is based on the weight of the *clean* rice exported or sold, it is necessary to set up some method of determining how much tax was paid on the processing of that particular clean rice. Different lots of rough rice will turn out different proportions of clean rice, depending upon many factors. The Secretary of the Treasury, therefore, in promulgating these conversion factors, has simply stated on what basis the United States will make these refunds or drawbacks. The conversion factors are simply figures to be used, for the purpose of drawbacks, in determining how much rough rice was theoretically processed to obtain the amount of clean rice exported or sold. When this amount of rough rice is determined by the use of these arbitrary conversion factors, the Secretary of the Treasury makes the refund to the miller on the basis of the result obtained by this calculation. These arbitrary percentage figures promulgated by the Secretary of the Treasury, called "conversion factors," therefore have nothing whatever to do with the question of the passing on of a particular tax, and, if they prove anything at all, they prove only that it is impossible to apportion the tax on a given lot of rough rice among the varying grades of clean rice, and the rice products processed therefrom, except by the use of arbitrary figures. The reference to *United States v. Jefferson Electric Manufacturing Company* (1934), 291 U. S. 386, 402, is

equally inappropriate. The tax involved in that, and related cases, was a tax upon the *sale* of a definite, determinable object, and amounted to 5% of the price for which the object was sold, which tax was shown on the face of the invoice paid by the purchaser. The tax was not upon the manufacture or the manufacture and sale. *Indian Motorcycle Company v. United States* (1931), 283 U. S. 570, 574. An examination of the records and briefs in the *Jefferson Electric Company case,* and related cases, reveals that nowhere was any contention made that the proof required could not be made. The complaint was that the remedy was changed after the accrual of the right to recover the tax in such manner that the taxpayer could not recover the tax paid unless he had not collected the tax from his vendee or gave bond that in such case he would return the amount of the tax so collected to the vendee. In the *Jefferson Electric Company case* the taxpayer was, in effect, simply acting as the collecting agent for the Government of a tax which was intended by Congress to be borne by the vendee and the vendee alone. That case has absolutely no bearing on the present cases.

The Government also contends that *Burnet v. Houston* (1931), 283 U. S. 223, is conclusive that the inadequacy of these petitioners' remedy at law is simply a misfortune which must be borne by them. That case involved the inability of a single taxpayer to make proof of a material fact necessary to be established to procure an income tax refund. The stat-

ute involved did not establish any burden of proof inherently impossible of being met, nor did it involve the inability of an entire class of taxpayers, because of the nature of their business, to make the proof required. It is simply not in point.

The Government, relying on *United States v. Jefferson Electric Company, supra,* asserts that the granting of injunctions in these cases would result in unjust enrichment of petitioners. The Act involved in that case permitted the recovery of the tax by the person who actually paid it. If the taxpayer failed to prove that he had not collected the tax from the purchaser of the article involved, he could nevertheless procure a refund of the tax by giving a bond conditioned that he would pay the money over to the purchaser who had actually paid. As has already been pointed out, there is no such provision in the present Act, and the denial of the injunctions would necessarily result in unjust enrichment of the Government if the Act were to be held unconstitutional. The astounding proposition that the Government should take and keep *all of the tax* simply because of the *possibility* that someone other than these petitioners might have, to some undisclosed extent, borne the ultimate economic burden of the tax is contrary both to law and good morals. *Bull v. United States* (1935), 295 U. S. 247, 261. It is to be remembered that petitioners here are not seeking to recover money in the hands of the Government, as was the taxpayer in the *Jefferson Electric Company case,* but they are seeking to pre-

vent the Government from taking from them by forcible process moneys to which petitioners say the Government is not entitled. In such a situation the doctrine of unjust enrichment would in any event have no application.

These matters aside, however, the complete answer to this contention of the Government is that it *assumes* that the taxes have been "passed on," a matter which petitioners confidently assert can neither be proved nor disproved.

Petitioners submit that on the face of the Act an impossible burden of proof has been placed upon petitioners. Petitioners further assert that even if this were not true, the courts below should have enjoined the collection of the tax until such time as the courts could make a finding upon the fact question of whether, under the peculiar conditions of the rice industry, the proof could be made. The motion to dismiss which was sustained by the District Court admitted these allegations of petitioners' bills of complaint and under the circumstances the court was under the plain duty of preserving the *status quo* until such time as the facts upon which the petitioners' constitutional rights depended could be fully determined. *Ohio Oil Company v. Conway* (1929), 279 U. S. 813.

Besides the lack of any adequate remedy at law this case presents several other grounds for equitable relief which have been held sufficient by this Honorable Court to support an injunction against the collection of a tax:

1. Multiplicity of suits. (R. 23.) *Wilson v. Illinois Southern Railroad* (1924), 263 U. S. 574; *Raymond v. Chicago Union Traction Company* (1907), 207 U. S. 20.

2. Congress has made no appropriation to repay any of these taxes if illegally collected, even if an adequate remedy at law were available, and in view of the tremendous amount involved, it is improbable that any such appropriation will be made. (R. 24.) *Stewart Dry Goods Company v. Lewis* (1932), 287 U. S. 9.

3. The statute purporting to give the legal remedy has never been interpreted by the courts and for this reason, if for no other, petitioner's remedy at law cannot be said to be adequate. *Atlantic Coast Line v. Daughton* (1923), 262 U. S. 413. *cf. Union Pacific Railroad v. Weld County* (1917), 247 U. S. 282.

4. The existence of the heavy civil and criminal penalties provided by Section 19(b) of the Act.* (R. 15.) *Ex Parte Young* (1908), 209 U. S. 123, 146; *Wallace v. Hines* (1920), 253 U. S. 66.

In closing this section of the brief petitioners again challenge the Government to suggest *how* the proof required by Sec. 21(d) can be made, bearing in mind that petitioners would be required to establish the four elements "* * * by appropriate proof, like other elements of such a right or cause of action * * *." *United States v. Jefferson Electric Company, supra,* page 400.

*The applicable penalty provisions are copied in Appendix C hereto.

afforded to get it back even if the statute under which it was collected be later held unconstitutional. The right of a State to exclude foreign corporations from doing business within its borders is apparently as absolute and unqualified as the right of Congress to abolish the District Courts. Nevertheless, this court has held, *Fidelity & Deposit Co. v. Tafoya* (1926), 270 U. S. 426, that this "most absolute seeming" right was qualified, and in some circumstances could become wrong, and that the State could not impose an unconstitutional condition upon the foreign corporation coming into the State. The exercise of Congress' right to limit the equity jurisdiction of the lower Federal Courts in the granting of injunctions in tax cases such as the present would be, as in the case just cited, for the purpose of securing a result forbidden by the Constitution, *i. e.*, the deprivation of petitioners' property without due process of law. See also *Brinkerhoff-Farris Trust & Savings Company v. Hill* (1930), 281 U. S. 673, and *Graham & Foster v. Goodcell* (1931), 288 U. S. 409, 430, 431.

In the preceding discussion the statutes have been considered as a limitation by Congress on the *Federal* Courts. However, no such limitation appears in the acts and by their plain terms they apply to *"any"* court which would, of course, include a State Court. Whatever the authority of Congress may be with respect to abolishing Federal Courts, it certainly could not abolish State Courts, and its authority over the jurisdiction of State Courts must be limit-

ed to that which is necessary for the carrying out of its delegated powers. Doubtless, when a taxpayer is afforded a full and adequate remedy for the recovery at law of a Federal tax illegally exacted, Congress could forbid State Courts, as well as Federal Courts, from enjoining the collection of such taxes. However, petitioners submit that Congress may not constitutionally forbid State Courts to grant injunctions against the collection of Federal taxes in cases where the taxpayer is by statute deprived of the right to recover the tax in the event it be held to have been assessed under an unconstitutional statute. The statutes in question applying to *all* courts in plain and unequivocal language, may not by interpretation be held to apply only to Federal Courts for the purpose of, if possible, saving their constitutionality. It cannot be presumed that Congress would have passed these statutes in like terms applicable only to Federal Courts, since, if the State courts were free to grant injunctions, the whole purpose of the statutes would be defeated.

There is still another reason why these statutes if construed to absolutely and in all cases forbid injunctions are unconstitutional. The Constitution, Article III, Sec. 1, vests the judicial power of the United States in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish. By Sec. 2 of Article III this judicial power extends to *all* cases in law and *equity* arising under the Constitution and laws of the United States. Congress having established the

District Courts and the Circuit Courts of Appeals and having conferred upon them *jurisdiction* over *all* cases in law and in equity arising under the Constitution and laws of the United States [Sec. 41(1), Title 28, U. S. C.], these courts at once become vested with the *judicial power* necessary to carry out the jurisdiction conferred by Congress. This *judicial power*, as distinguished from *jurisdiction*, springs from the Constitution, and not from the act of Congress. These suits arise under the Constitution and laws of the United States, and therefore come within the jurisdiction of the District Courts as defined by Congress. The only way in which the *judicial power* of the courts could be exercised and vindicated in these cases is by the issuance of injunctions both to preserve the *status quo* until the final determination of the constitutionality of the Act could be made, and, when that determination is made, to make effective its decree of unconstitutionality. Courts have inherent power to issue injunctions to preserve their jurisdiction and make effective their decrees. *Julian v. Central Trust Company* (1904), 193 U. S. 93, 112. The statutes here involved which would forbid the issuance of injunctions in these cases therefore completely destroy one of the inherent powers of the courts. This Congress may not do. In *Michaelson v. United States* (1924); 266 U. S. 42, 64, 65, 66, this court said:

> *"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in*

respect of its validity would be presented; and it, therefore, becomes our duty, as this court has frequently said, to construe it 'if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.'. Panama R. R. Co. v. Johnson, 264 U. S. 375.

"But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. *The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power.* So far as the inferior Federal Courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson,* 19 Wall. 505, 510-511; *Bessette v. W. B. Conkey Co.,* 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character."

To uphold these statutes would be "* * * to sap the judicial power as it exists under the Federal Constitution * * *." *Crowell v. Benson* (1932), 285 U. S. 22, 57. *cf. Murray's Lessee et al. v. Hoboken Land & Improvement Company* (1855), 18 How. 272, 284.

If this section of the Act be interpreted as depriv-

ing the courts of all *jurisdiction* to hear any of a class of cases arising under the Constitution and laws of the United States it is probably unconstitutional for another reason. Under Sec. 2 of Article III of the Constitution there are enumerated the types of cases to which the judicial power *shall* extend. As to some cases, such as those in law and in equity, arising under the Constitution and laws of the United States, the word *"all"* is used, whereas with respect to other classes of cases, such as those between citizens of different states, the word *"all"* is omitted. This would indicate an intention that Congress could limit or destroy the jurisdiction of the District Courts with reference to the classes of cases not preceded by "all" and, conversely, that it could not completely take away the jurisdiction with reference to any class of cases preceded by the word "all." *Martin v. Hunter's Lessee* (1816), 1 Wheat. 304, 334. On this basis *Kline v. Burk* (1922), 260 U. S. 226, and the cases cited therein may be readily distinguished. This proposition, of course, assumes a duty imposed upon Congress by the Constitution to create courts with jurisdiction over those cases preceded by the word "all" in Sec. 2 of Art. III. Whatever might be the difficulties of the proposition if Congress had never established courts with jurisdiction over such cases, because of the lack of any judicial remedy to compel Congress to create such courts, no such difficulty now exists since those courts have been created and clothed with the jurisdiction intended by the Constitution.

It is submitted that having performed its duty pursuant to the clear intent of the Constitution the Congress cannot now, by a legislative act, set at naught the constitutional requirement.

POINT D.

If injunctions in these cases may be constitutionally forbidden by Congress, then the statutory provisions for the summary collection of the taxes are unconstitutional.

Under Secs. 115 to 131, Title 26, U. S. C., as amended,* which are incorporated in the present Act, the respondent is authorized to collect the taxes, upon non-payment, by the fixing of liens on all of petitioners' property or by the levying of distraints against petitioners' property, including bank accounts, etc. Thus, respondent is by statute authorized to forcibly and summarily collect these taxes, whether they be invalid or not, and petitioners are powerless to prevent it. The constitutional validity of this summary procedure for the collection of taxes has uniformly been upheld on the ground that the taxpayer had an adequate, though deferred, remedy for the ultimate judicial determination of his liability for the tax. In *Phillips v. Commissioner* (1931), 283 U. S. 589, 596, this court said:

> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, *if the opportunity given for the ultimate judicial determination of*

*Printed in Appendix B.

the liability is adequate. Springer v. United States, 102 U. S. 586, 593; Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611, 631."

Under the facts of these cases petitioners are deprived of all legal remedy to recover the tax collected, if it be held illegal, because of the impossible burden of proof petitioners would have to meet in such a suit, and, if R. S. §3224 and Sec. 21(a) be so construed, petitioners are deprived of the right to test the validity of the tax by a suit for an injunction. The result would be that petitioners would never have any opportunity to procure a judicial determination of the constitutional validity of the tax forcibly taken from them and forever retained by the Government. To permit the Government to summarily seize petitioners' property under these circumstances would be to deprive petitioners of their property without due process of law. See, in addition to the case cited, *Lipke v. Lederer* (1922), 259 U. S. 557, 562; *Carpenter v. Shaw* (1930), 280 U. S. 363, 369; *Ward v. Love County* (1920), 253 U. S. 17.

Neither R. S. §3224 nor Sec. 21(d) of the Act as amended purport to forbid the granting of injunctions against the use of summary proceedings for the collection of taxes. Such injunctions would not restrain the collection of the tax, which could of course be collected through the customary judicial process, but would simply restrain administrative officials of the Government from using certain methods to

effectuate collection. Petitioners submit that, even if they were not entitled to the full relief prayed for, they were and are entitled to the lesser relief of an injunction against the use of the summary procedure provided in Secs. 115 to 131, Title 26, U. S. C., for the collection of the taxes.

POINT E.

The Agricultural Adjustment Act, as amended, is unconstitutional.

In view of the extraordinarily full presentation of the constitutionality of the original Act which has been made to the court in No. 401, *United States of America v. Butler,* petitioners' argument here will be more generalized than would otherwise be the case. It will be demonstrated, however, that the amendments to the Act, instead of curing its constitutional defects, have simply emphasized them.

The broad constitutional question presented by these cases is whether our national government shall continue to be one of limited and delegated powers as is provided in the existing Constitution or whether, through a process of amendment-by-erosion of that document, there shall be substituted a supreme and all powerful Federal government with state lines important only for the purpose of permitting the use of vari-colored maps in geographies. Petitioners do not propose to argue the social or economic desirability of this centralization of power in the

Federal Government. They are concerned only with the methods used to achieve it.

(1) The Act is an attempt to regulate the price at which petitioners buy and sell rice in intrastate commerce.

(2) The Act is an attempt to control the production of agricultural commodities within the several States.

Since these two points are so intimately related they will be discussed together. The congressional declaration of policy contained in the Act (Sec. 2), in the light of which *every word* in the Act must be read, leaves no doubt that the *sole* purpose of the Act is to fix the prices which farmers are to receive for their products in purely *intrastate* sales transactions. So far as the declaration of this primary purpose is concerned not even the wording of the Act has been changed by the amendments of August 24, 1935. The means by which this object is to be attained are set out in Sec. 8 of the Act, as amended. This section, as amended, withdraws the authority granted by the same section in the original Act in reference to licenses, but continues in effect the direction to enter into contracts for the reduction in acreage and production of any basic agricultural commodity and for the making of rental or benefit payments in connection therewith. Under sub-section (3) the Secretary is authorized to make certain other payments out of available funds for the purpose of effectuating the policy of the Act. The

payments so authorized are plainly complementary to the rental or benefit payments and for the same ultimate purpose. In order to raise the revenue necessary to make the payments required to effectuate the purposes of the Act the Secretary is authorized to proclaim that the making of such payments will tend to effectuate the purposes of the Act with respect to a given commodity and thereafter a processing tax shall be in effect with respect to such commodity. (Sec. 9.) Under the provisions of Sec. 9(b) (6) the amount of the tax is always subject to being increased or decreased, including a decrease to zero, at the discretion of the Secretary. The genesis of the tax is the existence of a *price* for a given basic agricultural commodity less than that which the Secretary determines it ought to be under the provisions of Sec. 8 (1). There is therefore *no tax* unless there is a *price to be fixed.* Furthermore, according to the Government's own argument, there will be no payment, and therefore no tax, unless there is to be a reduction in the acreage and crop of the commodity involved (Br. p. 76*.) Just as the existence of the tax is dependent upon the regulation of price and production, the existence of regulation of price and production is dependent upon the existence of the tax. As aptly stated by the Government the regulatory features of the Act "* * * would have failed dismally had it not raised large amounts of revenue" (Br. p. 28). Not only is the congressional intent to regulate the prices paid

*All references to the brief relate to the brief for the United States in No. 401, *United States v. Butler et al.*, unless otherwise indicated.

in purely intrastate transactions, and to regulate the acreage and production of agricultural commodities within the several states, apparent from the face of the Act itself, but the Government's whole argument that the Act was soundly designed to promote the "general welfare" is based upon the proposition that such is its purpose and such has been the actual result. (Br. p. 179ff.) That these objects sought to be attained by the Act are beyond the power of Congress is no longer open to doubt. *Child Labor Tax Case* (1922), 259 U. S. 20; *Hammer v. Dagenhart* (1918), 247 U. S. 251; *Hill v. Wallace* (1922), 259 U. S. 44; *Schechter Poultry Corporation v. United States* (1935) 295 U. S. 495; *Butler, et al., v. United States* (C. C. A. 1st., 1935), 78 F. (2) 1.

The Government contends, however, that the sole purpose of the processing and floor-stock taxes levied in the Agricultural Adjustment Act is to raise revenue and that the provisions of the Act itself, the manner of its enactment, and the practical operation of the taxes thereunder all compel this conclusion. In support of this contention the Government asks that the revenue features of the Act be read separate and apart from the regulatory features. In order to do this it would first be necessary to entirely rewrite the Act since the revenue features and the regulatory features are so inseparably interwoven in the very language itself that nothing intelligible could result from striking out all words in the Act referring to matters other than the levy-

ing of the tax. As has been pointed out above the taxes assessed and the regulations provided for are mutually interdependent both from the terms of the Act itself and its practical operation and effect. This Court has held that a single taxing statute may not be declared unconstitutional by considering its provisions and effects separate and apart from other related statutes forming a complete system. *Gregg Dyeing Company v. Query* (1932), 286 U. S. 472, 479. Conversely the constitutionality of one portion of a single act may not be upheld by refusing to consider the other provisions of the act to which it is inseparably related.

If this contention of the Government be regarded as a claim that the taxing features of the Act are separable from the remainder of it the result is the same. Exactly in point is *Williams v. Standard Oil Company* (1928), 278 U. S. 235, which involved a statute of the State of Tennessee seeking to regulate the price of gasoline and in connection therewith imposing a permit tax. The tax thus imposed was constituted as a special fund to defray the expenses of the administration of the law. This taxing feature as well as other regulatory features of the law was sought to be upheld despite the unconstitutionality of the objective of the Act on the ground that the Act contained a separability clause. With respect to this contention this Court said:

> "The bare recital of these details shows conclusively that they are mere adjuncts of the

price-fixing provisions of the law or mere aids to their effective execution."

This language is equally applicable to the Act under consideration. The taxes assessed are mere adjuncts to the price fixing and crop and acreage fixing features of the Act. When there is no necessity for price fixing there is no tax, thus demonstrating beyond any reasonable doubt that Congress did not intend that there should be a tax unless the fixing of prices of basic agricultural commodities through reduction in acreage and production of crops was to be effectuated. The reason for the tax, and the use to which moneys raised by it are put, is neither changed nor obscured by the verbal device of translating the words "* * * the proceeds derived from all taxes imposed under this title are hereby appropriated * * *" to "* * * *a sum equal to* the proceeds derived from all taxes imposed under this title is hereby appropriated." It is simply illustrative of the excessive reliance of present day legislative draftsmen upon word-magic, and a studied indifference to the admonitions of this Court that it is concerned with substance and not with form. It is but another example to be added to the body of learning on "Constitution-Avoidance" now being built up in Washington.

A further argument made in support of the Act is that the citizen, as a matter of public policy, should not be permitted to question the uses to which the moneys collected from him are put, citing

Massachusetts v. Mellon (1923), 262 U. S. 447. The case cited is, of course, no authority whatever for the proposition asserted. This court simply held there that the mere status of being a Federal taxpayer, contributing an infinitesimal amount along with millions of others to the United States Treasury, was an insufficient basis for the maintenance of a suit to test the constitutionality of a congressional appropriation in the absence of a showing that "* * * he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." Frothingham's contention in that case was simply that she would, to some undefinable extent, suffer damages by reason of a possible future increase in taxes because of the appropriation having been made. In the instant cases the injury is immediate, direct, and perceptible. The extent of the injury may be fixed with exactness and the *cause* of the injury is determinable with equal certainty since without the unlawful appropriation there would be no tax. The basic purpose of the Act is the regulation of agriculture, and the processors, and they alone, are being compelled to foot the bill. It is no answer to say that Congress might possibly change the appropriation at some future date. The change made by the amendment of August 24, 1935, in the uses to which the taxes collected might be put, in no wise changed the ultimate purpose for which the moneys were appropriated. All of

the taxes collected under the Act were, and still are, appropriated for expenditure for the purpose of achieving the policy of the Act, and for no other purpose. It would be as improper for this Court to hold the Act constitutional on the basis of what might occur in the future as it would be for the Court to hold an act unconstitutional on the same basis. *cf. Chastleton Corp. v. Sinclair* (1924), 264 U. S. 543, and cases there cited. Furthermore this whole argument of the Government overlooks the fact that what is here involved is the constitutionality of an act of Congress making an appropriation inseparably connected with the levying of a tax. What may in the future become of the money collected is not here involved. What is involved is the validity of the appropriation presently made. This Court long ago indicated in *Field v. Clark* (1892), 143 U. S. 649, 695, that whenever the appropriation of moneys procured from particular taxes was so inseparably connected with the provisions of the act levying the tax this Court would consider the constitutional validity of the appropriation. We submit that the Court should do so here.

Having attempted, on these technical grounds, to avoid judicial scrutiny of the purpose and effect of the Act, the government then argues that there is really no regulation at all,* and nothing more in-

*The actual purpose and effect of the Act is nowhere better illustrated than in the efforts of the Federal government to control prices in the rice industry during the past two years. Originally the control was attempted by direct means (licensing and marketing agreements) which methods eventually failed and it was then, and only then, that Congress attempted to achieve the regulation by indirect means through the processing tax. For the information of the court a summary history of Federal attempts at regulation in the rice industry is set out in Appendix F.

volved than the making of simple, private, voluntary contracts between the Secretary and individual producers of agricultural commodities, which contracts he could have made in any event even without the enactment of the statute. (Br. p. 266.) We incline to doubt the validity of contracts authorizing the expenditure of more than a billion dollars of Government funds entered into by the Secretary of Agriculture without congressional authority. That is beside the point, however, since the contracts made by him are pursuant to the legislative command of Congress. The fact that the arrangements between the Secretary of Agriculture and the individual farmers by which the latter reduce their acreage and the former makes benefit payments to them out of the taxes collected from processors are characterized in the Act as "voluntary" does not make the Act in purpose and effect any the less a regulation of agriculture within the state. *cf. Schechter Poultry Corporation v. U. S., supra,* p. 529. The asserted purpose of the Act was to achieve that result and the Government proudly asserts that such result has in fact been accomplished. (Br. p. 211.) The arrangements are made by virtue of, and under authority of, the law, and it is idle to say that the act of the farmer in reducing his acreage pursuant to the contract with the Secretary of Agriculture is voluntary when the farmer knows that if he does not execute such agreement he is subjected to the penalty of having to sell his commodity at the same price at which other farmers

sell it minus the substantial amount received by the other farmers by way of benefit payments. Furthermore without the tax provisions in the Act (which are certainly not voluntary) the enormous benefit funds with which to coerce the farmers into making the "voluntary" agreements would not be available, and the result sought to be achieved by Congress, to-wit, the regulation of agriculture within the several states, could not be accomplished. (Br. p. 28.) What is undeniably clear is that the taxing power is sought to be used in this Act, as it was in the *Child Labor Tax Case, supra,* for the purpose of regulating matters solely of state concern. The real basis of the decision in the *Child Labor Tax Case, supra,* was that the Act showed on its face an attempt by the Federal Government to regulate a "* * * business wholly within the police power of the state. * * *" *Hill v. Wallace, supra,* p. 67. It is no less a perversion of the taxing power to use the *benefits* of the tax to purchase the forbidden regulation than it is to use the *detriments* of the tax to compel submission to the forbidden regulation. The argument that there is no encroachment upon the sovereignity of the several states involved because any state or states could at any time pass a law which would abolish the effects of the contracts entered into between the Government and the producers ignores the basic question involved. The question is solely one of *power.* Either the Federal Government has authority to cause the reduction of production and acreage of basic agricultural com-

modities within the several states or it has not. If it has the power, then any action it takes toward this end is supreme and the states could do nothing to impair it. On the other hand, if the power is lacking, the Federal Government can do nothing to effectuate it regardless of what the states might or might not be able to do with regard to the matter involved. If, after the Federal government had made the necessary arrangements for the reduction of acreage and production, a particular state could, by passing a law, set it all aside, the state's authority to do so could only be based on the *lack of power* of the Federal Government to do the things it had done. The contracts it had executed would not be merely voidable—they would be utterly void. They would be of no more force or effect than the judgment of a court which showed on its face an entire absence of jurisdiction over the subject-matter. Reduced to its lowest terms, the argument of the Government simply is that the right of the Federal Government to do the things authorized by this Act should be upheld because in any event such actions would be utterly void from the beginning. Powers not granted to the Federal Government by the Constitution may not be exerted by it because of some supposed inability of the states to act in the premises, nor by the consent of the state or its citizens expressed in any manner other than that provided in Article V of the Constitution. This Court said in *Kansas v. Colorado* (1907), 206 U. S. 46, 89:

"But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expresed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. *This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.* With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary, *they should be granted by the people in the manner they had provided for amending that act.*"

The Tenth Amendment was not a grant to the states but simply a more specific limitation upon the power of the Federal government to make doubly sure that its activity should be confined to those fields in which power had been specifically granted to it.

There is still another reason why the Government's argument here is fallacious. In the first place, as a practical matter, a state could not by legislative fiat change the number of acres under

cultivation or the amount of the commodity being cultivated at any given time under the provisions of these contracts. It would simply be a physical impossibility. The states, however, could not consistently with the Federal Constitution, and most state constitutions, itself regulate the price at which basic agricultural commodities are sold or the number of acres or amount of crops planted. *Williams v. Standard Oil Company, supra,* and cases there cited. Thus, whatever regulation is accomplished within the state by virtue of the Act is beyond the power of the state to change. Viewed realistically, the contention of the Government here, if upheld, would inevitably make possible the regulation within the several states of any business the Federal Government might choose to select. This could be done despite the fact that the Federal Government would be acting within a field in which it has not been delegated power to act and despite the prohibitions of the Fifth and Fourteenth Amendments which forbid governmental control of businesses not affected with a public interest. If the Federal Government may, with money raised by taxation, purchase regulation of agriculture, no reason is perceived why it may not do the same thing with reference to manufacturing, mining, merchandising, etc.

It is submitted that these so-called "voluntary" contracts, and the regulation of agriculture within the several states which results from their execution, are effective *only* by virtue of the Act of Congress

here assailed and therefore the regulation is not accomplished, as the Government asserts, by independent agreements between the Secretary of Agriculture and individual farmers, since such agreements would be completely ineffective if there were no Agricultural Adjustment Act. The regulation has its source in the Act, and there alone. It is further submitted that to uphold the contention of the Government here would mean not only the nullification of important specific provisions of both state and Federal constitutions but would also mean a change in the very form of our Government.

(3) The taxes are not levied for the general welfare or for a public purpose and deprive petitioners of their property without due process of law, contrary to the Fifth Amendment.

The tax involved here is not a general tax but one the impact of which falls solely on a certain class of citizens—processors of basic farm commodities. The proceeds of these taxes are then appropriated for the benefit of another class of citizens—the producers of basic agricultural commodities. A plainer case of taking A's property and giving it to B can scarcely be imagined. Such a perversion of the taxing power was condemned by this court in no uncertain terms in *Loan Association v. Topeka* (1874), 20 Wall. 655. See also *United States ex rel. Miles Planting & Manufacturing Company v. Carlisle,* 5 App. D. C. 138; *Parkersburg v. Brown* (1882), 106 U. S. 487; *Cole v. LaGrange* (1885), 113 U. S. 1; *Railroad Retirement Board v. Alton Railroad Com-*

pany (1935), 295 U. S. 330, 350. Such a tax is plainly not for a public purpose and there is nothing to the contrary in *United States v. Realty Company* (1896), 163 U. S. 427. That case involved nothing more than the question whether an obligation arising out of acts long since completed could be considered a "debt" of the United States even though the Act of Congress under which the acts were done was unconstitutional. There was not there involved, as here, acts continuing to be done by virtue of the statute assailed as unconstitutional.

The government's main reliance here is upon the so-called "general welfare" clause of the Constitution and, though the broadest interpretation of that clause is not sought to be supported, the one which is asserted by the government as being correct (the so-called Hamiltonian theory) falls little short of this broadest interpretation which would authorize exertion of Federal power for the "general welfare" by means other than taxation. Conceding that the Federal government cannot legislate generally for the "general welfare" it is asserted that it may nevertheless use its taxing power for that purpose without being limited to the fields of authority delegated to the Federal government by express provisions of the Constitution. Since there is practically no limit to the use of the taxing power in the manner claimed to be proper by the government there would be, if the government's theory is accepted, practically no limit to the legislation which Congress could enact under the guise of a

supposed promotion of the public welfare. This court, speaking of the Tenth Amendment in *Kansas v. Colorado, supra,* p. 90, said:

> "This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, *under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.*"

The plain inference of this quotation is that Congress could never constitutionally legislate with respect to the supposed "general welfare" except within those fields where power has been specifically granted to it by the Constitution. And in *Veazie Bank v. Fenno* (1869), 8 Wall. 533, 541, this court declared itself in unmistakable language as opposed to the government's present interpretation:

> "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, *or if exercised for ends inconsistent with the limited grants of power in the Constitution.*"

The court here was speaking of the Federal power to tax and its language was quoted with approval in the *Child Labor Tax Case, supra,* page 41. To follow the government's interpretation would be to do violence to the whole theory and structure of our Federal Constitution which is based upon a Federal government of delegated powers and separate State

governments retaining all the powers not specifically granted to the Federal government. Only by acceptance of the so-called Madisonian theory of interpretation can a result consistent with this division of powers between the Federal and State governments be obtained.

However, even if it be assumed that in taxing for the "general welfare" Congress is not limited to those fields in which power has been delegated to it the Act here in question nevertheless is plainly not for the "general welfare" within any proper interpretation of that clause of the Constitution. The general welfare referred to in the Constitution is that "of the United States" and not that of any particular State or group of States within the Union. A great mass of statistical data has been brought together by the government to show the sorry plight in which the farmers found themselves during, and before, the depression years and that this weakness in farm income "contributed materially" to the general depression after 1929. (Br. p. 183.) It is then argued that it was "reasonable" and "logical" (Br. p. 217) to expect that an increase in the farmers' income would aid in bringing about recovery in other industries. In short, the argument is that since giving the farmer more money to spend would, to some undisclosed extent, aid recovery in other industries, an Act of Congress designed to give this additional money to the farmer is for the "general welfare." This same sort of argument was made in *Loan Association v. Topeka, supra,* and was

flatly rejected by this Honorable Court. Furthermore exactly the same argument could be made to support a congressional Act designed to increase the wages of workers in the capital goods industries, to increase the salaries of the so-called "white-collar" classes, to increase the wages of railroad workers, etc. For example, an argument, amply supported by government statistics, can be made that the farm surpluses referred to by the government were not the result of overproduction but of the inability of the public to buy even at depressed prices. Even in the banner year of 1929 the production of food products in the United States was 18,000,000,000 pounds short of enough to furnish a moderate diet for the people of this country.* Under these circumstances it would seem that a more direct contribution to the "general welfare" would have been for Congress to grant a bounty to all those unable to purchase sufficient food for a moderate diet and thus relieve the farmer and the consumer at one fell swoop. Or, less directly, the government might have granted a subsidy to the capital goods industries where the vast majority of our unemployment has been during the past few years with the result that workers in those industries would again be enabled to buy farm products and thus aid both the farmer and the worker.

The rehabilitation of the agricultural industry, like the rehabilitation of any other basic industry,

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*"Is the United States Slowly Starving?" by Charles W. Burkett. *Liberty*, April 13, 1935, p. 7.

may well contribute, to some undefinable extent, to the improvement of the general economic situation, but that does not mean that the rehabilitation of the agricultural industry, or any other industry, is for the "general welfare *of the United States.*" It was certainly not intended that Congress could use the taxing power for any purpose which might *tend* to "promote the public welfare of the United States" any more than the Congress is empowered under its authority over interstate commerce to pass any law which would *tend* to promote, impede, or affect that commerce. *cf. Schechter Poultry Corp. v. United States, supra,* page 544. It is submitted that, even accepting the government's theory, the promotion of the "public welfare" sought to be provided must be *direct* and not merely indirect or consequential. The only welfare which is *directly* affected by the Act is the welfare of a limited group of citizens living within a limited part of the United States. The Congress might just as well have selected any other group to receive the *direct* benefit and presumably the farmers were picked because of their greater ability to make their needs known. The benefit to the public at large is purely incidental to the direct benefit to the farmer and is as indirect, diffused, and impalpable as was the injury asserted by Frothingham in *Massachusetts v. Mellon, supra.* It is doubtful if even a general delegation of power to legislate for the "general welfare" would be interpreted to authorize legislation limited in its direct effects to a single class of citizens when its

effect upon the public generally would be remote and consequential. Here again the ultimate consequence of the acceptance of the argument of the government is that the whole theory of our government, accepted for more than a century, must be cast overboard.

There remains here to be noted the contention of the government that the right of Congress to take money from A and give it to B by means of taxation is supported by cases holding that the mere fact that the result of a tax is to confer a benefit on a certain class does not invalidate the tax. In all of the cases cited by the government, however, the effect upon the benefited class was merely incidental and consequential, and not direct, as is the case here. Cases sustaining the tariff are also cited as analogous and the tax here assailed even referred to as a "farmers' tariff." The situation with respect to the tariff is entirely different from that involved here and is in fact no different, constitutionally speaking, from the other tax cases referred to by the government. In all of them the tax collected went into the general funds of the United States without any appropriation of them being made in the Act imposing the tax or tariff. They were used for the general purposes of government and not appropriated for payment over to a single class of citizens. All that this court held in those cases was that when the Federal government exercised its unquestioned constitutional power to tax, or to impose a tariff, such taxes or tariff were not rendered unconstitutional because of

any ulterior motive Congress may have had in enacting them or because of any incidental benefit which might result to a certain class because of their imposition. Such decisions lend no support to the direct taking and giving involved in the present Act. Here the benefit is not incidental to the tax but the benefit is the primary purpose of the Act so that legally the tax is merely incidental to the benefit.

(4) The Act, as amended, contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

It is apparent from the face of the amendment of August 24, 1935, that its principal purpose was to attempt to cure the unconstitutional delegation of legislative power contained in the original Act. Upon analysis, however, it appears that the amendment actually did no more than to obscure the real powers conferred with a cloud of words and in addition there is now required greater mental and optical agility to locate and determine those powers than was the case in the original Act.

Now, as heretofore, a processing tax with respect to any given commodity comes into effect for one marketing year only when the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to such commodity and such tax terminates at the end of the current marketing year whenever the Secretary proclaims that the rental or benefit payments are to be discontinued with respect to such commodity. (Sec. 9(a)). The

rate of the tax is still to be fixed in accordance with the difference between the current average farm price for the commodity and the fair exchange value of the commodity, except that the Secretary may now add such percentage of such difference, not to exceed 20%, as he may determine will result in the collection of an amount of tax sufficient to pay the credits or refunds which he estimates will be made with respect to the commodity during the current marketing year as well as the amount of the tax which he estimates would have been collected on all processings of such commodity which are exempt from the tax because done by or for a state or a political subdivision thereof. (Sec. 9(b)(1)). The "fair exchange value" of the commodity is still defined as being the price therefor that will give the commodity the same purchasing power with respect to articles farmers buy as such commodity had during the base period and it is still provided that such fair exchange value as well as the current average farm price shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. Under the amendment, however, the fair exchange value is required to reflect interest payments per acre on farm indebtedness and tax payments per acre on farm real estate in the case of commodities where the base period is the pre-war period.

The Secretary still has unlimited discretion, whenever he is of the opinion that it is necessary to effectuate the policy of the Act, to suspend the tax

or require a refund, whichever he thinks would be preferable, or to exempt processors of any given commodity from payment of the tax (Sec. 15). He likewise has the same unlimited discretion, whenever he thinks it necessary for the accomplishment of the purposes of the Act, to exclude from the tax, for any length of time he deems desirable, any commodity or classification, type, or grade thereof (Sec. 11).

The Secretary is empowered under the provisions of Sec. 9(b)(6) to adjust the rate of the tax by an increase or a decrease (including a decrease to zero) under the following circumstances:

(1) Whenever the Secretary is of the opinion that the tax is having the effect of depressing the farm price of a given commodity or causing a surplus of such commodity to be accumulated due to a reduction in the domestic consumption of the commodity he may reduce the tax (including a reduction to zero) in such amount as he believes will rectify the situation.

(2) If the average farm price is within a certain percentage, more or less, for twelve successive months the tax is to be adjusted to a fixed percentage of the fair exchange value of the commodity.

(3) "In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraphs (2), (3), (4) or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased."

In the case of certain commodities (wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute

and to a limited extent sugar cane and sugar beets) the rate of the tax is fixed at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of the amendment during the period from such date to December 31, 1937 (Sec. 9(b)(2)). In the case of rice the tax rate is fixed at 1c per pound of rough rice for the period from April 1, 1935, to July 1, 1936 (Sec. 9 (b)(3)). These rates are of course subject to modification and change in accordance with the provisions of Sec. 9(b)(6) above referred to.

Reading Sec. 9 as a whole, the conclusion is inescapable that the rate of the tax is to be such rate as the Secretary of Agriculture determines will best effectuate the declared policy of the Act. Taking each apparent limitation contained in the multitudinous provisions of Sec. 9 of the Act, as amended, and following it back through all its meanders, in every case leads ultimately to the supposed specific limitation being absorbed in and nullified by the general power conferred upon the Secretary to make such adjustment in the rate as he *deems necessary to effectuate* the declared policy of the Act. Whether the rate is increased, decreased, abolished, or left as it is, rests solely in the uncontrolled discretion of the Secretary. Furthermore, under Secs. 11 and 15, the Secretary is empowered in his sole discretion to exclude any commodity or classification, type, or grade thereof from the operation of the tax, to suspend the tax or cause a refund thereof, or to exempt the processors of any given commodity from the tax,

and these sections contain nothing which could be considered even a gesture at control of the discretion of the Secretary. All that is required is that he be of the opinion that the exemption, suspension, or refund will tend to effectuate the policy of the Act.

The "policy" of the title affords no standard whatever. It is only that the Secretary of Agriculture, through the powers conferred on him in the title, shall so regulate Agriculture as to reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period. . The only limitation contained in the entire Act which is even apparently susceptible of definite determination is Sec. 9(b)(1), which, read alone, would seem to forbid the Secretary to *increase* the amount of the tax beyond the difference between the current average farm price of the commodity and the fair exchange value thereof. The apparent limitation disappears, however, when we read the provisions of Sec. 9(b)(6) (D) which provides that:

> "In accordance with the formulae, standards, and requirements *prescribed in this title,* any rate of tax prescribed in paragraphs (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) *shall be increased.*"

The "formulae, standards, and requirements prescribed in this title" include, of course, the provision in Sec. 9(a) which authorizes the Secretary to ad-

just the rate of the tax in such manner as he finds "necessary to effectuate the declared policy." This plainly gives the Secretary authority, if he finds it necessary to effectuate the purposes of the title, to raise the tax beyond a rate which equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity as determined by him, and this has been the administrative interpretation of the Act. *F. G. Vogt & Sons v. Rothensies* (D. C., E. D., Pa., 1935), 11 F. Supp. 225, 229. However, if the apparent limitation of Sec. 9(b)(1) were not destroyed by other provisions of the Act, the supposed standard contained in it is actually too vague and indefinite to be any real standard at all. The "fair exchange value" is defined as the price that will give a commodity the same purchasing power with respect to articles farmers buy as such commodity had during the base period. This the Secretary determines from "available statistics" of the Department of Agriculture. He likewise determines the current average farm price from the same source. He is not confined in his selection from the tremendous amount of data to be found in the Department of Agriculture but is free to roam at will, including some data and rejecting other, until a figure is finally reached. In determining the purchasing power of hogs, for example, during the base period, shall the Secretary select figures from the Chicago market, from the Kansas City market, from the St. Louis market, from the Ft. Worth market, or shall he

average them all together? And in determining what articles farmers buy is he to be governed by the purchases of the prosperous farmer, by the purchases of the average farmer, or by the purchases of the poor farmer? Is the price of articles that farmers buy to be determined by the delivered price or by the price f.o.b. factory? Obviously the average cost of farm machinery, for example, varies materially in proportion to the distance of the purchasing farmer from the industrial centers where the machinery is fabricated. Should the Secretary select the average cost of such machinery to the Indiana farmer or should he select the average cost to the California farmer? For aught that appears in the Act he may select any figure he pleases to arrive at his average. Indeed, it is not too much to say that a dozen competent statisticians could be loosed in the files of the Department of Agriculture for the purpose of determining the rate of the tax in accordance with the provisions of the Act and come out with a dozen different, and equally defensible, results. *cf. West v. Chesapeake & Potomac Tel. Co.* (June 3, 1935), not yet officially reported. Such a standard is in effect no standard at all.

Assuming, however, that the standard for determining the *initial* rate of the tax is sufficiently definite to form a workable standard, it does not follow that there has been no unconstitutional delegation of legislative power. The Secretary is still left free, by the very terms of the Act, to depart from the supposed standard at any time when, in his sole and uncontrolled discretion, it appears to him that

the departure from the standard will *tend to effectuate the purposes of the Act.* Further the exercise of this discretion by the Secretary would necessarily be based in practically all instances upon his personal prognostications as to future, and necessarily presently indeterminable, events. The so-called "hearings" and "findings" in some instances required by the Act are but forms and, of necessity, could be nothing else. The "hearings" could be no more than a forum for the expression of *opinions* and the "findings" could be no more than the Secretary's own opinion based on his personal belief. Whether he acts honestly or dishonestly, his opinions are final and not subject to review.

Turning now to the authority delegated to the Secretary to cause a tax to become applicable, as distinguished from the amount of it, we find the discretion given is quite as broad as, if not broader than, that given in other parts of the Act. Under Sec. 8(1) of the Act all that is necessary to bring into effect a tax with respect to a given commodity is for the Secretary to have *"reason to believe"* that the average farm price of the commodity is *"likely to be* less than the fair exchange value thereof" during the succeeding marketing year and that the exercise of any of the powers conferred upon him under subsections (2) and (3) of Sec. 8 would *"tend* to effectuate" the declared policy of the Act. Thus a tax may be imposed upon the basis of a mere belief entertained by the Secretary. Having thus imposed the tax he may use the proceeds thereof to make rental or benefit payments in such amounts

as he finds "to be fair and reasonable and best calculated to effectuate the declared policy of this title" for the purpose of reducing acreage and production with respect to such commodity to such extent as he finds "will *tend* to effectuate the declared policy" of the Act. He is likewise authorized to make certain other payments in such amounts and in such manner as he finds "to be fair and reasonable and best calculated to effectuate" the policy of the Act. If this is not complete delegation of the legislative power of Congress, it is difficult to conceive what would be.

Taking the Act as a whole, it is plain that it constitutes a delegation "* * * of power to make the law, which necessarily involves a discretion as to what it shall be * * *." *Field v. Clark, supra,* p. 693. Congress has not here said that there shall be a tax upon the processing of defined commodities, at a fixed rate, but has actually done nothing more than declare a congressional policy that farm income be increased, with full and unhampered discretion left to the Secretary to determine whether it is economically desirable and practically feasible to attempt to achieve that purpose by means of a processing tax.

The grave dangers inherent in such unlimited delegations of legislative power could not be better illustrated than by the practical operations of the present Act. By administrative interpretation the delegation of the power to ultimately determine the question of whether there shall be a tax has been

carried beyond the Secretary and vested *in the very persons who would receive the proceeds of the tax if it were levied.* The Secretary, before determining that there is to be a crop and acreage reduction program, sends his agents among the farmers to take votes for the purpose of determining whether a sufficient number of them will co-operate to make the program effective. (Br. p. 76.) If the vote is favorable, the program is declared and a tax goes into effect with respect to the particular commodity involved. If the vote is unfavorable, the declaration is not made and, of course, there is no tax. Thus, under the Act, the ultimate power to determine whether the processors shall pay a tax is lodged in the farmers who are to be the objects of the government's bounty. *cf. Seattle Trust Company v. Roberge* (1928), 278 U. S. 116.

Hampton & Company v. United States (1928), 276 U. S. 394, mainly relied upon by the government, in no wise sustains the delegation of power contained in this Act. In that case the President was required, pursuant to findings made by the Tariff Commission, to increase or reduce the tariff on imports in such manner as to equalize the differences in cost of production in the United States and abroad. The normal rate was definitely fixed by the Tariff Act and the President was not authorized to increase or decrease such fixed rate by more than 50%. He was likewise forbidden to change any article from the free list to the dutiable list. The objects upon which the tariff fell were definitely fixed by the Act and were not subject to

change by the President. His authority was limited to the findings of fact, according to a formula, and he was not authorized to depart therefrom nor to use an unlimited discretion to pursue means thought desirable by him for the purpose of increasing prices and reducing production.

The delegation here is different both in kind and degree. If it had fixed a definite rate of taxation on definite commodities with power lodged in the Secretary to increase or decrease the rate of the tax, within defined limits, and set up in the Act a formula to be employed by which, through mathematical calculations, the variation in rate could be fixed, the *Hampton case* might be in point. Here, however, the very existence of any tax at all depends upon the beliefs of the Secretary. Which basic agricultural commodities are to be taxed and which are to be exempt from taxation are subject to his sole discretion and he may add to or subtract from the list at his pleasure. The rate of the tax fixed according to the formula contained in the Act may be adjusted up or down by him without limitation. He can forgive the tax and even require the return of a tax already paid. He determines how much is to be paid to the farmers by way of benefits and also determines to what extent the farmer shall reduce his crops or acreage. He determines who shall be the beneficiaries of the Congressional largess and who shall be excluded from the fold. In short, he, and he alone, is vested with complete control over the production of basic agricultural commodities in

the United States and equally complete control of taxation on processors of such commodities. It is unthinkable that Congress, consistently with the Constitution, can so completely abdicate its powers, and the citation of the *Hampton Case,* which itself went to the "verge of the law," serves only to emphasize the far-reaching and uncontrolled delegation here. *Panama Refining Co. v. Ryan* (1935), 293 U. S. 388; *Schechter Poultry Corp. v. United States, supra.*

The government will doubtless urge that these petitioners are not in a position to contest the validity of the delegation of the legislative power since the tax rate on rice is fixed at 1c per pound based on the weight of the rough rice when it reaches the mill. (Sec. 9(b)(3)). The answer is that the tax on rice is simply a single inseparable part of the whole Act and could not be upheld if all the other taxes assessed pursuant to the Act were declared invalid. Congress, obviously, would not have passed the Agricultural Adjustment Act with reference to rice alone. Petitioners are required to pay a tax only by virtue of the provisions of the Act and if that Act is, as a whole, unconstitutional because of the delegations of legislative power contained in it, it is submitted that they are entitled to assert this invalidity. The fact that the Secretary has not changed the rate with respect to rice (as he is authorized to do) does not mean that he has not exercised the discretion conferred on him by the Act with respect to that rate. Under this discretion he could raise or lower the rate, or abolish the tax, or even provide for a

return to these petitioners of taxes already paid. A determination not to lower the rate, or to abolish the tax, so far as these petitioners are concerned is, in effect, an affirmative determination by the Secretary that in his opinion the present rate is a correct one. This is a plain exercise of discretion to the disadvantage of petitioners. Under the circumstances it is meaningless to say that a discretion to lower a tax may not be complained of by a taxpayer because it is beneficial to him. The Secretary here can lower the tax to zero and, so long as he does not do so, it is solely by virtue of his discretion that petitioners have to pay any tax at all. Even if this were not true, petitioners would still be entitled to assert the invalidity of the delegation with respect to the tax on other commodities on the broad proposition, stated above, that the tax on rice is an inseparable part of the Act as a whole and therefore is dependent for its validity upon the validity of the Act as a whole.

There remains for consideration Sec. 9(b)(6)(G) which provides that if any rate of tax fixed pursuant to paragraph 9(b)(6) is held unconstitutional there shall be levied, collected, and paid in lieu of the taxes fixed pursuant to the provisions of said paragraph (6), a tax at the rates fixed under paragraphs (2), (3), (4) or (5) to be in effect until changed by Congress, or until terminated by the Secretary as provided in Sec. 9(a), or by the President under the provisions of Sec. 13. It is noteworthy that this provision refers only to taxes fixed under the provisions of Sec. 9(b)(6). By the very

terms of that section, however, the rates of tax fixed under it do not apply after July 31, 1936, with respect to rice, and after December 31, 1937, with repect to other commodities, after which dates the Secretary is directed to fix the rates in accordance with the "formulae, standards, and requirements" provided in the remainder of the title. Furthermore, since the so-called "specific rates" with respect to all commodities other than rice are not rates actually fixed by Congress at all, but rates fixed by the Secretary and sought to be ratified by Congress, to give Sec. (G) effect would simply be to permit Congress to re-ratify tax rates fixed by the Secretary. (Sec. 9(b)(2)). It appears on the face of the Act that Congress did not intend to fix its own specific rates with reference to any commodities other than rice. If it had it could have put a figure into the Act with respect to them just as it did with respect to rice. What it did with respect to these other commodities, however, was simply to adopt by reference whatever rates, fixed by the Secretary, happened to be in force on the effective date of the amendment. The rates of course could, and did, change during the course of the bill containing the amendment through Congress and prior to its effective date. It would have been manifestly impossible for Congress to know, when the Act was being voted upon, what the rates with respect to these other commodities would be. These rates are therefore just as much rates fixed in the discretion of the Secretary as if Sec. 9(b)(2) of the amendment had never been en-

acted. The infirmity of existing rates may not be cured by the device of attempting to adopt in their stead rates which were themselves invalid. Beyond this the Secretary is authorized, under Secs. 9(a), 9(b)(1), and 9(c) and Secs. 11 and 15 of the Act, to modify the rates or make exemptions, irrespective of the provisions of Sec. 9(b)(6). It would therefore be impossible to tell whether a rate modification had been made pursuant to the powers granted in Sec. 9(b)(6) or pursuant to some other equally applicable provision of the Act. Since the conditions upon which the provisions of Sec. 9(b)(6)(G) are to become effective are incapable of definite ascertainment, it is completely ineffective. Even if it were effective it would not operate to cure the unconstitutional delegation of power but only to suspend it, in the case of rice, for a few months. Of course this section would have no bearing upon the situation if the Act were declared unconstitutional on any basis other than the delegation of legislative power.

CONCLUSION

It is submitted that the Agricultural Adjustment Act, as amended on August 24, 1935, is wholly unconstitutional. It is further submitted that these petitioners are entitled to injunctive relief and that all of these cases should be reversed with instructions to grant a permanent injunction against the collection of the taxes here assailed in any manner whatsoever or, in the alternative, with instructions to grant a permanent injunction restraining the col-

lection of the taxes assailed by means of any of the summary proceedings provided by Secs. 115 to 131, Title 26, U. S. C., as amended, and that this court should enter an order directing the depositary, heretofore appointed by the court to receive and hold the taxes here assailed during the pendency of these causes, to turn over to petitioners and each of them the full amount of such moneys so deposited by them.

Respectfully submitted,

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APPENDIX A

R. S. ART. 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * *

SECTION 21 OF AGRICULTURAL ADJUSTMENT ACT

SEC. 21. (*a*) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (*d*) of this section, may be reserved in the court's order.

(*b*) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this

amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to Section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(*c*) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under Section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount

thereof fixed specifically by prior Act of Congress.

(*d*) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considerd by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of Section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or

failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (*a*) and (*b*) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regula-

tions as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, or jurisdiction of such courts based upon the amount in controversy.

(*e*) In connection with the establishment, by any claimant, of the facts required to be established in subsection (*d*) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated

by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (*d*) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(*f*) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under Section 15, or Section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then

such one-year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(*g*) The provisions of Section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (*a*) or (*c*) of Section 15, Section 16, or Section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of Section 317 of the Tariff Act of 1930.

APPENDIX B

Provisions of Title 26, U. S. C. Dealing With Collection of Taxes By Distraint

Sec. 115. *Lien for Taxes.* (*a*) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (Balance of Section deals with recording of lien and giving of releases.) (R. S. Sec. 3186; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; Mar. 4, 1913, C. 166, 37 Stat. 1016; Feb. 26, 1925, C. 344, 43 Stat. 994; May 29, 1928, 8 a.m., C. 852, Title IV, Sec. 613, 45 Stat.)

116. *Distraint for Taxes.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with 5 per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (Balance of Section deals with exempt property.) (R. S. Sec. 3187; June 2, 1924, 4:01 p.m., C. 234, Sec. 1016, 43 Stat. 343.)

117. *Same; Levy.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by Section 116 of this title, belonging to such person, or

on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (R. S. Sec. 3188.)

118. *Same; Exhibit of Evidences Relating to Property.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid. (R. S. Sec. 3189.)

119. *Same; Proceedings On.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place

of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (R. S. Sec. 3190.)

120. *Same; Sale of Property Subject to Tax.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon. (R. S. Sec. 3191.)

121. *Same; Sale of Property; Purchase for United States.* When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States. The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in Section 3210 of the Revised Statutes, as amended (R. S. 3192, as amended May 10, 1934, 11:40 a.m., C. 277, Sec. 508, 48 Stat.)

122. *Same; Restoration of Property on Payment Before Sale.* (This merely provides for return of

property distrained upon if tax is paid prior to sale.) (R. S. 3193.)

123. *Same; Effect of Certificate of Sale.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (R. S. Sec. 3194.)

124. *Same; When Property Not Divisible.* (This deals with special case of indivisible property and allows sale of the whole even though its value exceeds amount of the tax. (R. S. Sec. 3195; June 2, 1924, 4:01 p.m., C. 234, Sec. 1031 (*a*), 43 Stat. 351; re-enacted Jan. 26, 1926, 10:25 a.m., C. 27, Title XI, Sec. 1128 (*a*), 144 Stat. 124.)

125. *Real Estate; Sale to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy colector, he is authorized to collect the same by seizure and sale of real estate. (R. S. Sec. 3196.)

126. *Same; Proceedings.* The officer making the

seizure mentioned in Section 125 of this title shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of $10. (Balance of section deals with details of conducting sale.) (R. S. Sec. 3197; Feb. 27, 1877, C. 69, Sec. 1, 19 Stat. 248; Mar. 1, 1879, C. 125, Sec. 3, 20 Stat. 331; May 28, 1896, C. 252, 29 Stat. 179; Mar. 3, 1905, C. 1483, Sec. 1, 33 Stat. 1207; July 19, 1919, C. 24, Sec. 1, 41 Stat. 209.)

127. *Same; Certificate of Purchase; Deed.* (This provides for execution of deed by the collector to the purchaser.) (R. S. Sec. 3198.)

128. *Same; Deed Prima-Facie Evidence.* The deed of sale given in pursuance of Section 127 of this title shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the

provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereo. (R. S. Sec. 3199.)

129. *Same; Place of Seizure (and Sale).* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under Section 3187 of the Revised Statutes), or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of Section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (R. S. Sec. 3200; amended Jan. 26, 1926, 11:25 a.m., Title XI, Sec. 1129, 44 Stat. 125.)

130. *Same; Redemption Prior to Sale.* (This provides for return of property seized on payment of tax.) (R. S. Sec. 3201.)

131. *Same; Redemption After Sale.* (This provides for redemption after sale by payment to purchaser, within one year after the sale, of the purchase price with interest at 20% per annum.) (R. S. 3202.)

APPENDIX C

Penalty Provisions

Section 19(b) of the Agricultural Adjustment Act:

> "Sec. 19. * * * (*b*) All provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926, and the provisions of Section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: * * * ."

Section 1114 of 1926 Revenue Act, applicable with respect to taxes imposed by Section 600 of that Act:

> "Sec. 1114. (*a*) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.
>
> "(*b*) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by

this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

"(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of Section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under Section 3256 of the Revised Statutes.

"(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand

by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

"(*f*) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

APPENDIX D

AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS OF AUGUST 24, 1935

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL ADJUSTMENT

Declaration of Emergency.

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

Declaration of Policy

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contracted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August, 1909,-July, 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, Augsut, 1919,-July, 1929.

(2) To protect the interest of the consumer by (*a*) approaching the level of prices which it is declared to be the policy of Congress to establish in sub-section (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (*b*) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in sub-section (1) of this section.

PART 2—COMMODITY BENEFITS

General Powers.

SEC. 8. (1) Whenever the Secretary of Agriculture has reason to believe that:

(*a*) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and

(*b*) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under sub-sections (2) and (3) of this section would tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under sub-sections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this title.

(2) Subject to the provisions of sub-section (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(*a*) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of investigation made pursuant to sub-

section (1) of this section, will tend to effectuate the declared policy of this title, and to make such adjustment program practicable to operate and administer, and

(*b*) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this title and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments, or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this title.

(3) Subject to the provisions of sub-section (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(*a*) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(*b*) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(*c*) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

(4) Whenever, during a period during which any of the powers conferred in sub-section (2) or (3) is being exercised, the Secretary of Agriculture

has reason to believe that, with respect to any basic agricultural commodity:

(*a*) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(*b*) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in sub-sections (2) and (3), and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under sub-section (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this sub-section, in connection with the exercise of any of the powers conferred upon him under sub-sections (2) or (3) of this section.

(5) In the course of any investigation required to be made under sub-section (1) or sub-section (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

(6) No payment under this title made in an agricultural commodity acquired by the Secretary in pursuance of this title shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this sub-section, hogs and field corn may be considered as one commodity.

(7) In the case of sugar beets or sugar cane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933-1934 crop of sugar beets or sugar cane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugar cane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugar cane.

(8) In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by sub-section (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such sub-section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this title, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

(9) Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage

of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest.

Processing Tax

Sec. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that (1) in the case of sugar beets and sugar cane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after the date of the adoption of this amendment, and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935. In the

case of sugar beets and sugar cane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of sub-section (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized undes Section 8 which are in effect are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: Provided, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

Tax Rate Generally.

(b) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per

centum as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to Section 15(c) with respect to the commodity, and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus

stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

Specific Tax Rates.

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this sub-section) in the case of sugar cane and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of this amendment, during the period from such date of December 31, 1937, both dates inclusive.

Specific Tax Rate—Rice.

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough ricee.

Specific Tax Rate—Marketing Year—Floor Stocks—Rye.

(4) For the period from September 1, 1935, to December 31, 1937, both inclusive, the processing tax with respect to rye shall be levied, assessed, collected, and paid at the rate of 30 cents per bushel of fifty-six pounds. In the case of rye, the first marketing year shall be considered to be the period commencing September 1, 1935, and ending June 30, 1936. Subsequent marketing years shall commence on July 1 and end on June 30 of the succeeding year. The provisions of Section 16 of this title shall not apply in the case of rye.

Specific Tax Rate—Floor Stocks—Barley.

(5) If at any time prior to December 31, 1937, a tax with respect to barley becomes effective pursuant to proclamation as provided in sub-section (a) of this section, such tax shall be levied, assessed, collected, and paid during the period from the date upon which such tax becomes effective to December 31, 1937, both inclusive, at the rate of 25 cents per bushel of forty-eight pounds. The provisions of Section 16 of this title shall not apply in the case of barley.

Adjustment of Rate.

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae,

standards, and requirements of paragraph (1) of this sub-section, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum

the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In acordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax, the rate of which is prescribed in paragraph (2), (3), (4), or (5) of this sub-section or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as provided in Section 9(a) of this title or pursuant to Section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in Section 9(a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4), or (5) of this sub-section, subject, however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in Section 9(a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of Section 9 or terminated pursuant to Section 13 of this title.

(F) After December 31, 1937 (in the case of the

commodities specified in paragraphs (2), (4), and (5) of this sub-section), and after July 31, 1936 (in the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title but not in this paragraph (6), and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason any provision of the Constitution or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6), rates of tax fixed under paragraph (2), (3), (4), or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in Section 9(a) or pursuant to Section 13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4), and (5) shall not be levied, assessed, collected, or paid.

Rice—Special Rule.

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice,

the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

Sugar—Special Rule.

(8) In the case of sugar beets or sugar cane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and in the event that the Secretary increases or decreases the rate of tax fixed by paragraph (2) of this sub-section, pursuant to the provisions of paragraph (6) of this sub-section, then the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (A) of a ton of sugar beets and (B) of a ton of sugar cane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); the rate of tax fixed by paragraph (2) of this sub-section or adjusted pursuant to the provisions of paragraph (6) of this subsection shall in no event exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, Chapter 1.

Wheat Premiums.

(9) In computing the current average farm price in the case of wheat, premiums paid produc-

ers for protein content shall not be taken into account.

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in Section 2; and, in the case of all commodities where the base period is the prewar period, August, 1909, to July, 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment, and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to Section 9(a) of this title.

(d) As used in part 2 of this title—(Sub-paragraphs 1 to 6 contain definitions of the word "processing" as to commodities other than rice.)

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and

in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor," as used in sub-section (b-1) of Section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling.)

(8) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Argiculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the prod-

ucts thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of part 2 of this title, processing shall be held to include manufacturing.

(g) Nothing contained in this title shall be construed to authorize any tax upon the processing of any commodity which processing results in the production of newsprint.

Miscellaneous.

Sec. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations; Provided, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (1) The Secretary of Agriculture is authorized to establish, for the more effective admin-

istration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under Section 8. The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2) Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are

hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and articles processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

(e) The action of any officer, employee, or agent in determining the amount of and in making any payment authorized to be made under Section 8 shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the Island of Guam; except that, in the case of sugar beets and sugar cane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Phillippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the Island of Guam. The President is authorized to attach by Executive order any or all of such possessions to any internal revenue collection district for the purpose of carrying out the provisions of this title.

(g) No person shall, while acting in any official

capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this sub-section shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of Sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreements to be commenced anl prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with

such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of Section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to Section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of Section 8d (2) hereof.

Commodities.

Sec. 11. As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, sugar beets and sugar cane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. As used in

this title, the term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.

Appropriation

Sec. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under Section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy—and beef-cattle industries, and to carry out any of the purposes described in sub-sections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, pay-

ments authorized to be made under Section 8, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under Sub-section (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this sub-section.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

Termination of Act.

Sec. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugar cane, the taxes provided by this title shall

cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate on December 31, 1937, unless this title ceases to be in effect at an earlier date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

Separability of Provisions.

Sec. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid, the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

Supplementary Revenue Provisions

Exemptions and Compensating Taxes

Sec. 15. (a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such result will in his judgment most effectively be prevented by a suspension of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the

commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this title with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products, or shall credit against any tax due and payable under this title the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of Sub-section (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of Section 21, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, becomes due and payable upon imported articles of the kind described in such certificate, shall be refunded by the

Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of Section 21, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13, and July 7, 1934, both inclusive.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(b-1) (This deals with tax exempt warrants on rice and is no longer applicable.)

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: Provider, however, That no tax shall be refunded or credited under this section, unless the person claiming

the refund or credit establishes in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. The word "State" as used in this section shall include a State and any political subdivision thereof.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors or producers thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist; he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

(e) During any period for which a processing

tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity into such an article at the time of importation: Provided, (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this sub-section, shall be deemed applicable to such possession with respect to such commodity or commodities, but shall not be deemed applicable to such possession with respect to other commodities; and (2) That all taxes collected under this sub-section upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control.

(f) The President, in his discretion, is authorized by proclamation to decree that all or part of the taxes collected from the processing of sugar beets or sugar cane in Puerto Rico, the Territory of Hawaii, the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam (if the provisions of this title are made ap-

plicable thereto), and/or upon the processing in continental United States of sugar produced in, or coming from, said areas, shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund, in the name of the respective area to which related, to be used and expended for the benefit of agricultural and/or paid as rental or benefit payments in connection with the reduction in the acreage, or reduction in the production for market, or both, of sugar beets and/or sugar cane, and/or used and expended for expansion of markets and for removal of surplus agricultural products in such areas, respectively, as the Secretary of Agriculture, with the approval of the President, shall direct.

APPENDIX E

Excerpts Relating to "Passing On" of Taxes From Economic Authorities

I.

Report of the President's Cabinet Committee on the Textile Industry, Senate Document No. 126, 74th Congress, August 20, 1935, pp. 141, 142:

> "Profits or losses for individual processors are, however, in themselves no proof that the processing tax has been passed on. For many years large numbers of establishments have been operating at losses and gradually going out of business. This situation would remain unchanged if all mills passed on the full amount of the processing tax. To argue that losses indicate failure to pass on the processing tax is tantamount to arguing that any loss which a mill may sustain should be ascribed to the processing tax.
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> * * * * *
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> "It is impossible to disentangle the effect of any individual element of cost upon selling price. The processing tax is commingled with other costs, and the competitive forces in the industry tend to operate to bring costs and prices into relation to each other. In this sense, the processing tax is, by and large, passed on to the consumer of the final product."

II.

A report of Administration of the Agricultural Adjustment Act, May, 1933, to February, 1934, Washington, 1934, Government Printing Office, p. 220:

> "The question 'Who pays the processing tax' cannot be answered by a mere examination of

the change in producer, wholesale and retail prices, and the final spread between them * * *."

III.

CORN-HOG ADJUSTMENT; A Handbook for Use in the Corn-hog Adjustment Program, Washington, 1935, Government Printing Office, pp. 77-82:

"It is not easy to make a thorough and accurate analysis of the actual effects of the Processing Tax to date on consumers' expenditures, handlers' margins or return to producers, partially with respect to hogs, because of day-to-day and week-to-week variations in hog marketing, changing trends in consumers' incomes, and fluctuations and other factors affecting market value of farm commodities. It is easy to be misled by changes in the market value of corn and hogs, which are due to other things than the collection of the rocessing Tax."

IV.

XIV ENCYCLOPEDIA OF THE SOCIAL SCIENCES, Article "Taxation," pp. 535-537:

"Because of this necessary dependence upon economic theory in general, beliefs regarding the shifting and incidence of taxation have varied widely with the struggle to formulate a more and more satisfactory explanation of the operation of economic forces. * * * Theoretical conclusions regarding the probable incidence of taxation, such as those above outlined, can be applied to the analysis of a practical problem only with great difficulty. If the conclusions are to be valid, not only must the economic theory be sound and adequate but the conditions surrounding the particular levy under consideration must not depart materially

from the assumptions made in the theoretical analysis. Since such assumptions are highly artificial, it is seldom safe to advance confident pronouncements regarding the incidence of a particular tax. * * * In this field modesty is a becoming virtue. * * * If the amount of verified knowledge concerning the shifting and incidence of taxation is disappointingly slight, the knowledge relating to the more remote influences and effects is even more negligible."

V.

Henry Carter Adams, THE SCIENCE OF FINANCE, New York, 1898, Henry Holt & Co., p. 388:

"THE SHIFTING AND INCIDENCE OF TAXES.—As introductory to an analysis of the way in which taxes work, it is necessary to consider the shifting and incidence of taxes. There is perhaps no question respecting which so many conflicting views are entertained. Professor Seligman, whose ability to review bibliography and classify literature is unexcelled, shows in his chapter upon 'The History of the Doctrine of Incidence' that there are ten distinct groups of opinion entertained by writers upon this subject, and this of itself is adequate to suggest the care with which the student should enter upon its consideration."

VI.

Lionel D. Edie, ECONOMICS; PRINCIPLES AND PROBLEMS, New York, 1926, Thomas Y. Crowell Company, p. 743:

"The basic distinction which underlies all discussion of shifting and incidence is that between margin and surplus. A tax on marginal

industry tends to be shifted fully, but a tax on surplus tends not to be shifted at all. Surplus is not a part of cost of production, but is due to the fact that many concerns can produce at less than the marginal cost, although they sell at the general price fixed by the marginal concern. Yet even this basic distinction must not be taken in any absolute form. The individual peculiarities of each tax require analysis in light of the separate problems which they raise. The whole theory of incidence suffers from the fact that it is only a theory, and lacks adequate statistical verification. The theoretical principles are useful, but should not be taken as adequate guides until statistical verification is more complete than at present."

VII.

Jens P. Jensen, PROBLEMS OF PUBLIC FINANCE, New York, 1924, Thomas Y. Crowell Company, p. 204:

"COMPARISON OF SHIFTABLE AND NON-SHIFTABLE TAXES.—The shifting processes indicated fall far short of accounting for all combinations and possibilities. It is almost impossible to foretell in some cases who will be required to bear a given tax; in others the probability of shifting or non-shifting is strong. In all cases the statesman who imposes a tax which he wishes to lodge in a certain place will have many factors to consider, most of which are very difficult to measure quantitatively. No iron-clad rule can be laid down as to the relative desirability of shiftable as compared with non-shiftable taxes. A more detailed discussion of the advantages and disadvantages of each can best be presented in connection with the consideration of the several taxes in the tax system."

VIII.

Merlin Harold Hunter, OUTLINES OF PUBLIC FINANCE, New York, 1926, Harper & Bros., p. 157:

> "THE RELATION OF SHIFTING TO PRICE.—It would be utterly impossible to trace the burden of every tax until the incidence were definitely determined. In fact, it would be impossible to trace definitely, through all its ramifications of direct and indirect influences the shifting and effects of any tax burden, though it could be much more nearly done in some cases than in others. Some taxes are not shifted at all, others to a very small extent, while the burden of some is lost in the great mass of a consuming population where it is impossible, frequently, even to locate or estimate it."

IX.

A. W. Flux, ECONOMIC PRINCIPLES, An Introductory Study, London, 1923, Methuen & Co., Ltd., p. 264:

> "The problems connected with the determination of the real incidence of various forms of taxation are among the most difficult problems of economics. We shall only consider some of the most general features of this class of problems."

X.

Henry Sidgwick, THE PRINCIPLES OF POLITICAL ECONOMY, London, 1901, MacMillan & Co., Ltd., p. 570:

> "We have now to notice a new element of imperfection and uncertainty in the equalisation of taxation, due to the fact that we can only partially succeed in making the burden

either of 'direct' or 'indirect' taxes fall where we desire: the burden is liable to be transferred to other persons when it is intended to remain where it is first imposed; and, on the other hand, when it is intended to be transferred the process of transference is liable to be tardy and incomplete. Indeed this process is often so complicated and obscure that it is a problem of considerable intricacy and difficulty to ascertain where the burden of a tax actually rests; and it is not even a simple matter to state accurately the general principle for determining the incidence of a tax, supposing all the facts to be known. Thus (*e.g.*) Mill appears to assume as a general principle (Book V. c. iii., Sec. 3) that a tax must be 'considered as paid' by 'those who would be benefited if it were taken off.' But is easy to shew that, in some cases, the whole benefit of remission would be reaped by persons who have not borne any part of the burden of the tax: it is not the extra income that a man would gain if the tax were taken off which gives the true measure of the burden it imposes on him, but rather the extra income that he would now be enjoying if it had never been laid on. But to get even an approximate estimate of this hypothetically determined burden may require a very careful consideration of complex consequences; and the result must often be at the best but partially satisfactory."

XI.

Henry Rogers Seager, PRINCIPLES OF ECONOMICS, New York, 1923, Henry Holt and Company, p. 516:

"It is a fact familiar to every one that taxes are often shifted by those who pay them to others so that ultimate payment may be made by persons ignorant of the taxes' very existence.

This shifting is often very complicated and our treatment of it must be illustrative rather than exhaustive."

XII.

Garver and Hansen, PRINCIPLES OF ECONOMICS, Boston, 1928, Ginn and Company, p. 630:

"The details of the process of shifting are very complex. Here we have only attempted to set forth the most general principles. A tax is not easily shifted (1) when it is universal—when it hits all people and all businesses alike; (2) when it hits net income; (3) when it hits surpluses and does not impinge on margins."

XIII.

M. Slade Kendrick, TAXATION ISSUES, New York, 1933, Harper & Brothers, 102-103, 104-105, 124-125:

"When a tax is paid ultimately by some one other than the original payer, the process of transferring it to the person of final payment is known as shifting. The incidence, or actual pecuniary burden, of a tax, *so far as the matter of its payment is concerned,* rests on this last payer. The collection of a tax entails many effects other than a possible shifting of it to others. And the decision whether to levy a tax or not should include a consideration of these effects as well as of its incidence. It is proposed here, however, to examine only the matter of its shifting—a sufficient task.

"Shifting is a price process. Unless a tax affects a price, it cannot be shifted, for there is no way of transferring its payment to some one else. Price is the medium for the transfer of tax burdens, just as it is the medium for the transfer of other costs. The shifting of a tax, then, is one more chapter in theory of price. Thus its examination runs in terms of those fa-

miliar fundamentals, supply and demand; for only by affecting supply or demand can price be changed.

"The usual analysis of shifting finds the effect of a tax on a price through its effect on the supply of the object taxed. If the supply is changed because of the tax, the price likewise is changed, thus shifting the tax in some degree. If the supply is unaffected by the tax, the price likewise is unaffected by it and no part of the tax is shifted. Thus, in examining the incidence of a tax on land, the inquiry is whether as a result of the tax the supply of land is changed. Commonly the supply of land situation is found to be unaffected by it. Thereby the conclusion is reached that a tax on the site value of land cannot be shifted, but that one on the fertility of the soil or on buildings may be shifted. Again, in examining the incidence of a tax on a commodity, the question is whether the tax through raising the cost of producing the commodity will operate to limit the supply of it produced and thus to increase the price at which it is sold. Throughout both of these analyses and others, the demand schedule is assumed to be unaffected by the tax.

"Possible changes in demand are not considered because the effects of the expenditure of funds exacted by the tax are not examined. And indeed there is, in general, good reason for this omission. The allocation in dollars of any special effect arising from the expenditure of the contribution to the general revenue fund by a given tax object, upon the supply curve or the demand curve of this tax object, may well be a highly artificial task, and in the present state of economic knowledge is probably an impossible one. Therefore, on the whole, the current practice in works on the shifting and

incidence of taxation, of treating public expenditures in a rather vague and general way, and incidence of taxation in a most particular and specific way, and of never permitting the twain to meet, is probably justified."

" * * * It follows directly from the assumption fundamental to current theories of the shifting and incidence of taxation. Thus, if it be granted, as the current theory assumes, that the incidence of a tax is a function of the particular supply-demand relationship of the object upon which the tax is levied, it follows that any factor introduced by the tax which changes this relationship is pertinent to the question of the incidence of this tax. This conclusion is inevitable—to hold otherwise is to say that the incidence of a tax must be determined by the supply-demand relationship of the tax object which existed *before* and not after the imposition of the tax, even though, on account of this tax, this supply-demand relationship has changed. Therefore, if it can be shown that the expenditure of the funds yielded by a tax changes the supply-demand relationship of the object taxed, a consideration of such effects of this expenditure is relevant to the analysis of the incidence of this tax. For it can scarcely be denied that the expenditure of the yield of a tax is a factor introduced by the tax whenever the dependence of a particular expenditure on the particular tax can be traced."

" * * * No single chapter can include all aspects of the problem of tax shifting. Moreover, the *principle* involved can be demonstrated best by an examination of the incidence of a tax on gasoline under conditions of increasing and decreasing cost. This tax is levied in cents per gallon on the sale of gasoline, and the proceeds are commonly used on the roads, with

the result that the roads are being steadily improved as funds from it flow into the public treasury.

"However, in examining the incidence of this tax, it must be confessed at the outset that any examination of the incidence of the gasoline tax that is made here must be based on hypothetical data. The writer has been unable to find information which establishes the precise shape of either the supply curve or the demand curve for gasoline. Does the supply curve slope upward or downward with increases in the quantity of gasoline produced? Is gasoline production subject to the law of diminishing returns or to the law of increasing returns? Is the demand curve for gasoline elastic or inelastic, and in what degree? At each price in a given schedule, what quantity of gasoline will be purchased? Facts such as these are usually missing when analyses of the incidence of taxation are made. Consequently, it is usually necessary to substitute hypotheses for realities and to encounter the hazards incidental to such substitution. But the purpose of this analysis is not so much to establish an absolute truth—if such there be—as to suggest a principle."

XIV.

Sir Josiah Stamp, THE FUNDAMENTAL PRINCIPLES OF TAXATION, London, 1921, Macmillan and Co., Limited, p. 130:

"It is commonly recognized that the incidence of taxation is a very intricate problem, which for its elucidation in many cases requires great powers of abstract economic analysis. When we inquire into the incidence of a tax we usually mean 'by whom is the tax finally paid?' and when we speak of effects, we have in mind some-

thing beyond the incidence—whether the conduct of the prayer on account of the tax is modified in such ways in his economic relationship to others as to alter the equilibrium of business. For example, we should agree that although the importer pays the tea-duty, its final incidence, *via* the wholesaler and retailer, is upon the consumer. But its *effects* may be more far-reaching. Does it diminish the consumption of tea and increase the profits of the cocoa dealers, or does it diminish the demand for children's boots, or is the effect generally diffused over all business? Would a 'turnover' tax have the effect of throwing business into the hands of large firms which controlled various stages of manufacture ordinarily carried on by separate firms, owing to the fact that in the former case the tax would be payable only once, and the aggregate price effect of the latter could therefore be undercut?

"I do not disguise the fact that this subject is the most difficult one of all those dealt with in these lectures, for if it is to be dealt with properly it demands on the part of all some knowledge of economic principles and the habit of economic reasoning."

XV.

David Friday, PROFITS, WAGES AND PRICES, New York, 1920, Harcourt, Brace & Howe, pp. 192, 197:

"Of all the complex forces which cause changes in prices, taxes are among the most potent and direct. If these taxes raise the prices of the goods and services which are sold by the recipients of large incomes and high profits, then they are a mere delusion and might better be paid by the people directly. * * * Where the forces are so many and so complex as are

those which underlie the movements of the price system it is impossible to make convincing statistical proof of causal relations."

XVI.

William J. Shultz, AMERICAN PUBLIC FINANCE AND TAXATION, New York, 1932, Prentice-Hall, Inc., p. 277:

"An individual or a business concern which pays a particular tax may find it possible to reimburse itself in one or both of two ways. It may add the tax, in proportioned fractions, to the prices of the goods or services it sells, and so pass the burden of the tax forward to the consumers of its products or services; or, instead, it may reduce the prices it pays for its purchases—the prices of the raw materials it buys, the rent it pays for land and buildings, the interest it pays on borrowings, the wages it pays to its employes—and so pass the burden of the tax backward to the producers of raw materials, to its landlord, to its banker, or to its employes. The process of passing the burden of the tax either forward or backward from the original payer is called shifting the tax. It may turn out that only one shift of the tax, backward or forward from the original taxpayer, can occur. It is possible that the process of shifting the tax may proceed through a long chain of economic relationships, until there is no immediate connection between the original taxpayer and the individual who eventually bears the burden of the tax. The coming of a tax to ultimate rest upon some individual or class of individuals is called the incidence of the tax.

"The history of doctrines upon the shifting and incidence of taxes is a series of episodic

and often contradictory approaches to the subject, rather than a progressive development of knowledge."

XVII.

Carl C. Plehn, INTRODUCTION TO PUBLIC FINANCE, 4th Ed., New York, 1921, The MacMillan Company, p. 310:

"CHAPTER XI—THE INCIDENCE AND EFFECTS OF TAXATION—Section 1. Definitions—The most difficult problems in taxation come under the heading of this chapter. Many of them are too intricate for an elementary treatise, so little more will be attempted than to state the nature of the problems and to suggest a mode of approach.

"We begin with definitions. An endeavor will be made to confine the term *shifting* to the transference of the tax from the person who first pays it to some other person who reimburses the first payer, or to its passage from one to another in a series of persons. In like manner we shall try to confine the term *incidence* or *final incidence* to the coming home of the tax to its final resting place with some person who cannot shift it any further. So far as it is possible to do so, both terms will be confined to the shifting of the burden of the tax *actually* collected by the government. The problem involved is: out of whose pocket did the money come which went into the public treasury; or, conversely, in whose pocket would that money have remained if it had not been taken by the government?

"These terms, shifting and incidence, are often used much more broadly. For there are burdensome effects of the imposition of a tax which are almost inseparable in thought from the incidence of the tax *per se*. Thus a tax on

liquor dealers may be so high that prices must be raised, custom falls off, and bartenders are discharged or their wages are reduced. Passing over for the moment the question whether the taxes actually paid come out of the pockets of the dealers or out of those of their customers, can we say that any of it came out of the wages of the bartenders? If we do so say, what would be our conclusion if the tax were so high as to kill the trade? Bartenders would receive no wages and yet could not be said to bear any tax for no tax was paid. A very severe burden has fallen on dealers, customers, and employes, yet no tax is paid. Wherever it is possible we shall refer to such incidental burdens as these as *effects* of the tax and regard them as something more or less separable from the questions of shifting and incidence. We may not succeed in this any better than have many other writers who have attacked the same problem. The difficulty is that the *effects* mingle with the incidence and the incidence with the effects. Every tax has a repressive effect, separable in thought but not always in computation from the money burden it involves."

XVIII.

Frederic Mathews, TAXATION AND THE DISTRIBUTION OF WEALTH, New York, 1914, Doubleday-Page & Company, p. 126:

"The indirect method of deriving social revenue by means of the taxation of goods consumed by the society has been adopted by all nations. A policy of such wide and constant application must possess certain advantages. These are expressed clearly and authoritatively in the words of Prince Bismarck, who says: 'I declare myself as essentially favourable to the raising

of all possible revenue by indirect taxes, and I hold direct taxes to be an onerous and awkward makeshift. . . . Indirect taxes, whatever may be said against them theoretically, are in fact less felt. It is difficult for the individual to calculate how much he pays, and how much falls upon his neighbours, but he knows how much income tax he pays. . . . With direct taxes a man is not asked: Can you on a pinch do without your beer; can you smoke less; can you use less light (petroleum) of an evening? No, he must pay the direct tax whether he has money or not, whether in debt or not; and what is worse, distraint follows, and nothing has a greater effect on a man's disposition than execution on account of a few pence which cannot at the moment be extorted from the one who owes them'."

XIX.

David Ames Wells, THE THEORY AND PRACTICE OF TAXATION, New York, 1900, D. Appleton & Company, pp. 569, 597:

"No attempt ought to be made to construct or formulate an economically correct, equitable, and efficient system of taxation which does not give full consideration to the method or extent to which taxes diffuse themselves after their first incidence. On this subject there is a great difference of opinion, which has occasioned, for more than a century, a vast and never-ending discussion on the part of economic writers. All of this discussion, however, has resulted in no generally accepted practical conclusions; has been truthfully characterized by a leading French economist (M. Parieu) as marked in no small part by the 'simplicity of ignorance,' and from a somewhat complete re-

view (recently published) of the conflicting theories advanced by participants one rises with a feeling of weariness and disgust.

"The majority of economists, legislators, and the public generally incline to the opinion that taxes mainly rest where they are laid, and are not shifted or diffused to an extent that requires any recognition in the enactment of statutes for their assessment. Thus, a tax commission of Massachusetts, as the result of their investigations, arrived at the conclusion that 'the tendency of taxes is that they must be paid by the actual persons on whom they are levied.' But a little thought must, however, make clear that unless the advancement of taxes and their final and actual payment are one and the same thing, the Massachusetts statement is simply an evasion of the main question at issue, and that its authors had no intelligent conception of it. A better proposition, and one that may even be regarded as an economic axiom, is that, regarding taxation as a synonym for a force, as it really is, it follows the nature and invariable law of all forces, and distributes itself in the line of inquiry most likely to lead to exact and practical conclusions. But beyond this it lacks value, inasmuch as it fails to embody any suggestions as to the best method of making the involved principle a basis for any general system for correct taxation, inasmuch as 'the line of least resistance' is not a positive factor, and may be and often is so arranged as to make levies on the part of the State under the name of taxation subservient to private rather than public interests. Under such circumstances the question naturally arises, what is the best method for determining, at least, the approximate truth in respect to this vexed subject? * * *

"It is not, however, contended that unequal taxation on competitors of the same class, persons, or things diffuses itself whether such inequality be the result of intention or of defective laws, and their more defective administration. And doubtless one prime reason why economists and others interested have not accepted the law of diffusion of taxes as here given is that they see, as the practical workings of the tax systems they live under, or have become practically familiar with, that taxes in many instances do seem to remain on the person who immediately pays them; and fail to see that such result is due—as in the case of the taxation of large classes of the so-called personal property—to the adoption of a system which does not permit of equality in assessment, and therefore can not be followed by anything of equality in diffusion."

XX.

Edwin R. A. Seligman, THE SHIFTING AND INCIDENCE OF TAXATION, Fourth Edition, New York, 1921, Columbia University Press, p. 219:

"The problem of the shifting of taxation is primarily a question of prices. To solve it is to discover whether, and to what extent, the imposition of a tax effects changes in the revenues and the expenses of individuals; in other words, to ascertain which of the two parties to every economic transaction—the buyer and the seller—bears the burden of the tax. This is obviously not the same as saying that we are dealing only with the relations between the producer and consumer. The vendor may, indeed, be a producer; but he may also be an owner who has acquired the commodity without producing it. Whatever these relations may be, the essence

of the inquiry is: Are prices raised, and if so, to what extent are they raised? Whether we deal with the prices of consumable commodities, of capital, or of labor, this is always the nature of the problem.

"It is readily perceived, therefore, that the theory of the shifting of taxation is a part of the wider theory of value, and that a comprehension of the facts of incidence depends on an application of these laws of value. But the laws of value, as is now well recognized, deal primarily with the more or less subtle changes caused in the supply of, or in the demand for, commodities. Even the cost of production, which plays so fundamental a part in economic progress, affects price through the medium of changes in the relations of supply and demand. Our concern, then, will be not only to mention those general laws of value which are of especial significance to the subject under discussion, but also to call attention to the varying conditions under which these laws work themselves out. In other words, we have to deal not alone with the "pure theory," but also with those phenomena of friction which impede the action of the general laws and are of fundamental importance in any application of the doctrine of the affairs of real life."

XXI.

Harley Leist Lutz, PUBLIC FINANCE, Second Edition, New York, 1929, D. Appleton and Company, p. 317:

"The fact that taxes may, under certain conditions, be shifted is one of the characteristics of taxation that has long been familiar to students and observers of tax systems, and has engaged their speculative interest more, perhaps,

than any other aspect of the subject. A wide range of theories has been formulated to explain this phenomenon. It is unnecessary to review here all of these theories. Among the lot, two general tendencies stand out as most worthy of special mention, in part because each contains an element of truth, and in part because they well represent the extremes to which this kind of theorizing has been carried."

XXII.

C. F. Bastable, PUBLIC FINANCE, Third Edition, London, 1922, Macmillan and Co., Limited, p. 387:

"Our examination of the general conditions that help to determine the true incidence of taxes on the different constituents of income, though necessarily brief, at least makes it plain that the theoretical explanation of the subject is not the simple process sometimes imagined. The movement of a given tax is not invariably in the same direction: its course will be guided by the surrounding circumstances. Without knowing what these are we cannot tell the direction, much less the precise extent, of its incidence. To pretend to say where, *e.g.* a tax on profits will fall, without possessing further data, is as vain as to seek to determine the space traversed by a moving body whose initial velocity and period of movement are both unknown.

"The difficulty of estimating the incidence of taxation is increased by the complementary alterations that take place in the economic system. A change in rent implies changes in the amount and probably in the relations of the other shares in distribution; a rise or fall in the price of one article leads to other changes of price, and we may therefore expect that even in the most precise and determinate cases of

incidence some additional diffused effect will be produced.

"At the best, and after the exercise of the utmost care, there will remain some obscurity as to the exact extent to which shifting takes place, owing chiefly to the difficulty of employing statistical verification. Deduction from general propositions cannot overcome this obstacle, and special vigilance is therefore necessary to avoid errors arising from the want of a check such as the process of verification provides. The earlier theories are so many warnings of the danger of hasty deductions from insufficient premises."

Other authorities are cited in the footnotes to the dissenting opinion of Mr. Justice Stone and Mr. Justice Brandeis in *Indian Motorcycle Company v. U. S.* (1931), 283 U. S. 570, 581.

APPENDIX F

Regulation of Rice Under Agricultural Adjustment Act

By Section 8 of the original Act the Secretary of Agriculture was granted the powers "in order to effectuate the declared policy," (1) to provide for a reduction in the amount of rice produced and for benefit payments to co-operating producers to be paid out of a processing tax on rice; (2) to enter into marketing agreements with processors; and (3) to place under license any or all processors or producers. The original Act was approved too late in 1933 for a program of crop reduction and benefit payments for that year. Consequently, the Secretary exercised his powers in subdivisions (2) and (3) and in October, 1933, executed a marketing agreement with a majority of the millers and simultaneously placed all millers under a license having substantially the same provisions so that all millers, whether they signed the marketing agreement or not, would be subject to the same restrictions. To bring about an increase in the prices, the Secretary fixed both in the agreement and the license the minimum prices to be paid producers for rough rice and also the prices for clean rice sold by millers by providing that clean rice could be sold for not less than the cost of rough rice plus 70¢ per barrel conversion, cost of container and certain other items.

In March, 1934, a direct crop control program for the 1934 season was inaugurated. A new marketing agreement was executed and a new license promulgated, effective March 6, 1934. In the marketing agreement, but significantly not in the license, this crop control program was provided for in Article VIII. That article began:

> "*To control the production* of rough rice in the States of Louisiana, Arkansas and Texas, the Secretary *shall* institute an annual crop con-

trol *program* in the following manner": (Italics ours.)

Provision was made for the Secretary to determine the total rice "which should be produced in said states, and each of them," and to allot acreage to producers who would co-operate in reducing their production. It then provided that each miller on buying rough rice could pay the producer only 60% of the price of the rice and must pay the other 40% to the Secretary, out of which the latter would make benefit payments to co-operating producers. The Secretary determined the total acreage to be planted and barrels to be produced, allotted different amounts to the three States and then through a system of county and State committees broke these down into allotments to individual producers. The base period for Louisiana and Arkansas was the years 1929 through 1933, and for Texas 1931 through 1933. Allotments were made to individual producers, who would agree to the program, of 80% of their average acreage and production in the period 1929-1933 in Louisiana and Arkansas and 78% in 1931-1933 in Texas. *No one who did not produce rice in this base period was given an allotment.* Contracts were executed between the Secretary and the individual eligible producers under which the signing producers agreed to reduce their production on the above basis and agreed to the payment by the millers to the Secretary of the above mentioned 40% of the sale price of their rice.

This 60%-40% program of payments was omitted from the license as the Secretary obviously realized that it could not be enforced against a miller who did not agree to the provision through signing the marketing agreement as the *buying* of rice and *payment* therefor are not in any sense of the word interstate commerce.

Here was a direct system of crop control and re-

duction. If a producer refused to agree to reduce his acreage and to agree to the above 60%-40% program, or if he produced no rice in his base period, he was not eligible for an allotment and the resulting benefit payment. This left the ineligible producer in this unfortunate position:

If he sold his rice to a signatory mill, a party to the marketing agreement, the mill paid him only 60% of the price and sent the other 40% to the Secretary, but this producer received no benefit payment and lost his 40%. This severely limited his market as the great majority of the mills had signed the marketing agreement, and he was forced to sell his rice to non-signatory mills. Thus as a practical matter, an eligible producer was forced to agree to the Secretary's program, and the ineligible producer was given the not easy choice of abandoning his undoubtedly constitutional right to grow rice without such an impossible burden or become a rice "bootlegger," and many *a fortiori* chose the latter course.

Under this marketing agreement and license the Secretary pursued the same course of fixing the prices for rough rice and for clean rice.

The March, 1934, agreement and license were succeeded by amendments of July 21, 1934, which carried forward substantially the same plan and which amounted in fact to a complete rewriting of the agreement and license. For the information of the court we have included a copy thereof in Annex B.

The success of this program, with its fixing of prices for rough and clean rice, depended on its being observed by all mills, both those signing the marketing agreement as well as those subject only to the license. It is well known in the rice industry that the non-signatory mills took the position that they were not bound by the license and did not have to comply with its price fixing provisions. The Secretary thereupon in December, 1934, and Jan-

uary, 1935, made an attempt to enforce the license against non-signatory mills by hearings to revoke their licenses (as for example, the procedure set forth in the affidavit of Homer L. Bruce, R. 64), but this was slow and cumbersome and we know of no case in which any mill's license was actually forfeited and the mill thereafter prosecuted for operating without a license.

As a result, this entire program of direct action by Federal government to control rice production was abandoned, and the processing tax route was then chosen to arrive at the same destination—crop reduction and control—for the 1935 crop. On March 18, 1935, an amendment to the Act was approved placing the tax of 1c per pound or $1.62 per barrel on rice (Public Act No. 20, 74th Congress). Section 9 of the original Act was amended by providing that:

> "in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935."

Although the initial rate was fixed at 1c per pound, the Secretary was given the power to raise, lower or abolish it.

The Secretary made the proclamation above referred to and under Section 8(1) inaugurated the program of crop reduction for 1935, the details of which are set forth in Exhibits A and B to the Bill of Complaint, R. 27-48. Substantially the same program as that for 1934 was adopted—only producers being eligible for benefit payments that grew rice in the respective base periods who would agree to reduce their production, the benefit payments being made out of the proceeds of the processing tax. This program has been, and is still being, carried out by the Secretary and the processing taxes

are for the purpose of making benefit payments to co-operating producers.

In a word, the Federal government, having found that a direct control of rice production through marketing agreements and licenses could not be accomplished satisfactorily, is now seeking to accomplish the same end indirectly through the processing tax.

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

COMPILATION OF AGRICULTURAL ADJUSTMENT ACT AS AMENDED

AND

ACTS RELATING THERETO

AS OF AUGUST 27, 1935

COMPILED UNDER THE DIRECTION OF
THE SOLICITOR

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

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COMPILATION OF AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AND ACTS RELATING THERETO

AGRICULTURAL ADJUSTMENT ACT, AS AMENDED, AS OF AUGUST 27, 1935 [1]

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AGRICULTURAL ADJUSTMENT

DECLARATION OF EMERGENCY

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) [To] *Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to* establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farm-

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Agricultural Adjustment Act, Public, No. 10, 73d Congress, 48 Stat. 31 (1933), as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

ers buy, equivalent to the purchasing power of agricultural commodities in the base period; *and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period.* The base period in the case of all agricultural commodities except tobacco *and potatoes* shall be the prewar period, August 1909–July 1914. In the case of tobacco *and potatoes*, the base period shall be the postwar period, August 1919–July 1929.

As amended by sec. 1 (a) and sec. 62 of Public, No. 320, 74th Congress, approved August 24, 1935, entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes". Sec. 62 adds the words "and potatoes".

[(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909–July 1914.]

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

As amended by sec. 1(b) of Public, No. 320, 74th Congress, approved August 24, 1935.

PART I—COTTON OPTION CONTRACTS

SEC. 3. The Federal Farm Board and all departments and other agencies of the Government, not including the Federal intermediate credit banks, are hereby directed—

(a) To sell to the Secretary of Agriculture at such price as may be agreed upon, not in excess of the market price, all cotton now owned by them.

(b) To take such action and to make such settlements as are necessary in order to acquire full legal title to all cotton on which money has been loaned or advanced by any department or agency of the United States, including futures contracts for cotton or which is held as collateral for loans or advances and to make final settlement of such loans and advances as follows:

(1) In making such settlements with regard to cotton, including operations to which such cotton is related, such cotton shall be taken

over by all such departments or agencies other than the Secretary of Agriculture at a price or sum equal to the amounts directly or indirectly loaned or advanced thereon and outstanding, including loans by the Government department or agency and any loans senior thereto, plus any sums required to adjust advances to growers to 90 per centum of the value of their cotton at the date of its delivery in the first instance as collateral to the department or agency involved, such sums to be computed by subtracting the total amount already advanced to growers on account of pools of which such cotton was a part, from 90 per centum of the value of the cotton to be taken over as of the time of such delivery as collateral, plus unpaid accrued carrying charges and operating costs on such cotton, less, however, any existing assets of the borrower derived from net income, earnings, or profits arising from such cotton, and from operations to which such cotton is related; all as determined by the department or agency making the settlement.

(2) The Secretary of Agriculture shall make settlements with respect to cotton held as collateral for loans or advances made by him on such terms as in his judgment may be deemed advisable, and to carry out the provisions of this section, is authorized to indemnify or furnish bonds to warehousemen for lost warehouse receipts and to pay the premiums on such bonds.

When full legal title to the cotton referred to in (b) has been acquired, it shall be sold to the Secretary of Agriculture for the purposes of this section, in the same manner as provided in (a).

(c) The Secretary of Agriculture is hereby authorized to purchase the cotton specified in paragraphs (a) and (b).

SEC. 4. (a) The Secretary of Agriculture shall have authority to borrow money upon all cotton in his possession or control and may, at his discretion, deposit as collateral for such loans the warehouse receipts for such cotton.

(b) The Secretary of the Treasury is authorized to advance, in his discretion, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 [to be available, until March 1, 1936], to the Secretary of Agriculture, for paying off any debt or debts which may have been or may be incurred by the Secretary of Agriculture and discharging any lien or liens which may have arisen or may arise pursuant to part 1 of this title, for protecting title to any cotton which may have been or may be acquired by the Secretary of Agriculture under authority of part 1 of this title, and for paying any expenses (including, but not limited to, warehouse charges, insurance, salaries, interest, costs, and commissions) incident to carrying, handling, insuring, and marketing of said cotton and for the purposes described in subsection (e) of this section. *This sum shall be available until the cotton acquired by the Secretary of Agriculture under authority of Title 1 of this Act, including cotton futures, shall have been finally marketed by any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture.*

As amended by sec. 35 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The funds authorized by subsection (b) of this section shall be made available to the Secretary of Agriculture from time to time upon his request and with the approval of the Secretary of the Treasury. Each such request shall be accompanied by a statement showing by weight and average grade and staple the quantity of cotton held by the Secretary of Agriculture and the approximate aggregate market value thereof.

(d) It is the purpose of subsections (b) and (c) to provide an alternative method to that provided by subsection (a), for enabling the Secretary of Agriculture to finance the acquisition, carrying, handling, insuring, and marketing of cotton acquired by him under authority of section 3 of this Act. The Secretary of Agriculture may at his discretion make use of either or both of the methods provided in this section for obtaining funds for the purposes hereinabove enumerated.

(e) The Secretary of Agriculture is authorized to use in his discretion any funds obtained by him pursuant to the provisions of subsection (a) or (b) of this section or of section 5 for making advances to any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture, to enable any such agency to perform, exercise, and discharge any of the duties, privileges, and functions which such agency may be authorized to perform, exercise, or discharge.

(f) The proceeds derived from the sale of cotton shall be held for the Secretary of Agriculture by the Treasurer of the United States in a special deposit account and shall be used by the Secretary of Agriculture to discharge the obligations incurred under authority of part 1 of this title. Whenever any cotton shall be marketed the net proceeds (after discharge of other obligations incurred with respect thereto) derived from the sale thereof shall be used, to the extent required, to reimburse the Treasury for such portion of the funds hereby provided for as shall have been used, which shall be covered into the Treasury as a miscellaneous receipt. If when all of the cotton acquired by the Secretary of Agriculture shall have been marketed and all of the obligations incurred with respect to such cotton shall have been discharged, and the Treasury reimbursed for any and all sums which may have been advanced pursuant to subsection (b), there shall remain any balance in the hands of the Secretary of Agriculture, such balance shall be covered into the Treasury as miscellaneous receipts.

The word "obligation" when used in this section shall include (without being limited to) administrative expenses, warehouse charges, insurance, salaries, interest, costs, commissions, and other expenses incident to handling, carrying, insuring, and marketing of said cotton.

Added by sec. 36 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 5. The Reconstruction Finance Corporation is hereby authorized and directed to advance money and to make loans to the Secretary of Agriculture for the purpose of providing funds with which to enable the Secretary of Agriculture to perform the duties and functions which he is directed or authorized to perform under

the provisions of part 1 of this title, provided such advance of money or such loans shall not be for amounts in excess of the market value of the cotton, or the interest of the Secretary of Agriculture in the cotton, against which the advance or loan is to be made at the time such advance or loan may be applied for by the Secretary of Agriculture, plus costs, expenses, and commissions incurred incidental to handling, carrying, and marketing of such cotton. The Secretary of Agriculture shall not be required to pledge or deposit warehouse receipts or other evidences of title to cotton as security for any advance of money or loans made pursuant hereto, but it shall be sufficient if the Secretary shall give to the Reconstruction Finance Corporation a written statement showing the quantity of cotton by weight and the average grade and staple of the cotton against which the advance or loan is to be made. The amount of notes, bonds, debentures, and other obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

[SEC. 6. (a) The Secretary of Agriculture is hereby authorized to enter into option contracts with the producers of cotton to sell to any such producer an amount of cotton to be agreed upon not in excess of the amount of reduction in production of cotton by such producer below the amount produced by him in the preceding crop year, in all cases where such producer agrees in writing to reduce the amount of cotton produced by him in 1933, below his production in the previous year, by not less than 30 per centum, without increase in commercial fertilization per acre.

(b) To any such producer so agreeing to reduce production the Secretary of Agriculture shall deliver a nontransferable option contract agreeing to sell to said producer an amount, equivalent to the amount of his agreed reduction, of the cotton in the possession and control of the Secretary.

(c) The producer is to have the option to buy said cotton at the average price paid by the Secretary for the cotton procured under section 3, and is to have the right at any time up to January 1, 1934, to exercise his option, upon proof that he has complied with his contract and with all the rules and regulations of the Secretary of Agriculture with respect thereto, by taking said cotton upon payment by him of his option price and all actual carrying charges on such cotton; or the Secretary may sell such cotton for the account of such producer, paying him the excess of the market price at the date of sale over the average price above referred to after deducting all actual and necessary carrying charges: *Provided*, That in no event shall the producer be held responsible or liable for financial loss incurred in the holding of such cotton or on account of the carrying charges therein: *Provided further*, That such agreement to curtail cotton production shall contain a further provision that such cotton producer shall not use the land taken out of cotton production for the production for sale, directly or indirectly, of any other nationally produced agricultural commodity or product.

(d) If any cotton held by the Secretary of Agriculture is not disposed of under subsection (c), the Secretary is authorized to enter into similar option contracts with respect to such cotton, con-

ditioned upon a like reduction of production in 1934, and permitting the producer in each case to exercise his option at any time up to January 1, 1935.]

Repealed by sec. 34 of Public, No. 320, 74th Congress, approved August 24, 1935.

[SEC. 7. The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided*, That he shall dispose of all cotton held by him by March 1, 1936: *Provided further*, That notwithstanding the provisions of section 6, the Secretary shall have authority to enter into option contracts with producers of cotton to sell to the producers such cotton held by him, in such amounts and at such prices and upon such terms and conditions as the Secretary may deem advisable, in combination with rental or benefit payments provided for in part 2 of this title.

Notwithstanding any provisions of existing law, the Secretary of Agriculture may in the administration of the Agricultural Adjustment Act make public such information as he deems necessary in order to effectuate the purposes of such Act.]

SEC. 7. The Secretary shall sell cotton held or acquired by him pursuant to authority of this Act at his discretion subject only to the conditions and limitations of Title 1 of this Act: Provided, That the Secretary shall have authority to enter into option contracts with producers of cotton to sell to or for the producers such cotton held and/or acquired by him in such amounts and at such prices and upon such terms and conditions as he, the Secretary, may deem advisable, and such option contracts may be transferred or assigned in such manner as the Secretary of Agriculture may prescribe.

Notwithstanding any provisions contained in option contracts heretofore issued and/or any provision of law, assignments made prior to January 11, 1934, of option contracts exercised prior to January 18, 1934, shall be deemed valid upon determination by the Secretary that such assignment was an assignment in good faith of the full interest in such contract and for full value and is free from evidence of fraud or speculation by the assignee.

Notwithstanding any provision of existing law, the Secretary of Agriculture may, in the administration of the Agricultural Adjustment Act, make public such information as he deems necessary in order to effectuate the purposes of such Act.

As amended by sec. 33 of Public, No. 320, 74th Congress, approved August 24, 1935.

PART 2—COMMODITY BENEFITS

GENERAL POWERS

SEC. 8. [In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as

the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments; and, in the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933–1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, to make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane. *In the case of rice, the Secretary, in exercising the discretion conferred upon him by this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to this section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of the Act, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.* Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest.]

As amended by sec. 7 of Public, No. 20, 74th Congress, approved March 18, 1935.

(1) *Whenever the Secretary of Agriculture has reason to believe that:*

(a) *The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and*

(b) *The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the Secretary under subsections (2) and (3) of this section would tend to effectuate the declared policy of this title,*

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination

and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this title.

(2) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall provide, through agreements with producers or by other voluntary methods,

(a) For such adjustment in the acreage or in the production for market, or both, of any basic agricultural commodity, as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, will tend to effectuate the declared policy of this title, and to make such adjustment program practicable to operate and administer, and

(b) For rental or benefit payments in connection with such agreements or methods in such amounts as he finds, upon the basis of such investigation, to be fair and reasonable and best calculated to effectuate the declared policy of this title and to make such program practicable to operate and administer, to be paid out of any moneys available for such payments or, subject to the consent of the producer, to be made in quantities of one or more basic agricultural commodities acquired by the Secretary pursuant to this title.

(3) Subject to the provisions of subsection (1) of this section, the Secretary of Agriculture shall make payments, out of any moneys available for such payments, in such amounts as he finds, upon the basis of the investigation made pursuant to subsection (1) of this section, to be fair and reasonable and best calculated to effectuate the declared policy of this title:

(a) To remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof;

(b) To expand domestic or foreign markets for any basic agricultural commodity or product thereof;

(c) In connection with the production of that part of any basic agricultural commodity which is required for domestic consumption.

(4) Whenever, during a period during which any of the powers conferred in subsection (2) or (3) is being exercised, the Secretary of Agriculture has reason to believe that, with respect to any basic agricultural commodity:

(a) The current average farm price for such commodity is not less than the fair exchange value thereof, and the average farm price for such commodity is not likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, or

(b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that none of the powers conferred in subsections (2) and (3), and no combination of such powers, would, if exercised, tend to effectuate the declared policy of this title,

he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such

determination, and shall not exercise any of such powers with respect to such commodity after the end of the marketing year current at the time when such proclamation is made and prior to a new proclamation under subsection (1) of this section, except insofar as the exercise of such power is necessary to carry out obligations of the Secretary assumed, prior to the date of such proclamation made pursuant to this subsection, in connection with the exercise of any of the powers conferred upon him under subsections (2) or (3) of this section.

(5) In the course of any investigation required to be made under subsection (1) or subsection (4) of this section, the Secretary of Agriculture shall hold one or more hearings, and give due notice and opportunity for interested parties to be heard.

(6) No payment under this title made in an agricultural commodity acquired by the Secretary in pursuance of this title shall be made in a commodity other than that in respect of which the payment is being made. For the purposes of this subsection, hogs and field corn may be considered as one commodity.

(7) In the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933–1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane.

(8) In the case of rice, the Secretary of Agriculture, in exercising the power conferred upon him by subsection (2) of this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to such subsection, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of this title, that the producer may pledge for production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments.

(9) Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any nonperishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing but no deduction may be made for interest.

Added by sec. 2 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 8a. (1) Having due regard to the welfare of domestic producers and to the protection of domestic consumers and to a just relation between the prices received by domestic producers and the prices paid by domestic consumers, the Secretary of Agriculture may, in order to effectuate the declared policy of this Act, from time to time, by orders or regulations—

(A) (i) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from importing sugar into continental United States for consumption, or which shall be consumed, therein, and/or from transporting to, receiving in, processing or marketing in, continental United States, and/or from processing in any area to which the provisions of this title with respect to sugar beets and sugarcane may be made applicable, for consumption in continental United States, sugar from the Virgin Islands, the Philippine Islands, the Canal Zone, American Samoa, the island of Guam, and from foreign countries, including Cuba, respectively, in excess of quotas fixed by the Secretary of Agriculture, for any calendar year, based on average quantities therefrom brought into or imported into continental United States for consumption, or which was actually consumed, therein, during such three years, respectively, in the years 1925–1933, inclusive, as the Secretary of Agriculture may, from time to time, determine to be the most representative respective three years, adjusted, together with the quotas established pursuant to paragraph (ii), (in such manner as the Secretary shall determine) to the remainder of the total estimated consumption requirements of sugar for continental United States, determined pursuant to subsection (2) of this section, after deducting therefrom the quotas for continental United States, provided for by paragraph (B) of this subsection: *Provided, however,* That in such quotas there may be included, in the case of the Virgin Islands, the Philippine Islands, the Canal Zone, American Samoa, and the island of Guam, direct-consumption sugar up to an amount not exceeding the respective quantities of direct-consumption sugar therefrom brought into or imported into continental United States for consumption, or which was actually consumed, therein during the year 1931, 1932, or 1933, whichever is greater, and in the case of Cuba, direct-consumption sugar up to an amount not exceeding 22 per centum of the quota established for Cuba: *And provided further,* That any imported sugar, with respect to which a drawback of duty is allowed, under the provisions of section 313 of the Tariff Act of 1930, shall not be charged against the quota established by the Secretary of Agriculture hereunder for the country from which such sugar was imported, and the Secretary of Agriculture may, by orders or regulations, readjust any quota subject to the provisions of this section, except quotas fixed by paragraph (B) of this subsection; and may allot (or appoint an officer, including the Governor General of the Philippine Islands for that area, in his name to allot) any quota, and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar and others; and/or

(ii) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from transporting to, receiving in, processing or marketing in, continental United States, and/or from processing in the Territory of Hawaii or Puerto Rico for consumption

in continental United States, sugar from the Territory of Hawaii or Puerto Rico, in excess of quotas fixed by the Secretary of Agriculture, for any calendar year, based on average quantities therefrom brought into continental United States for consumption, or which was actually consumed, therein during such three years, respectively, in the years 1925–1933, inclusive, as the Secretary of Agriculture may, from time to time, determine to be the most representative respective three years, adjusted, together with the quotas established pursuant to paragraph (i), (in such manner as the Secretary shall determine) to the remainder of the total estimated consumption requirements of sugar for continental United States, determined pursuant to subsection (2) of this section, after deducting therefrom the quotas for continental United States, provided for by paragraph (B) of this subsection: *Provided, however*, That in such quotas there may be included direct-consumption sugar up to an amount not exceeding the respective quantities of direct-consumption sugar therefrom brought into continental United States for consumption, or which was actually consumed, therein during the year 1931, 1932, or 1933, whichever is greater, and the Secretary of Agriculture may, by orders or regulations, allot such quotas and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar, and others; and/or

(B) Forbid processors [handlers], *persons engaged in the handling* of sugar, and others from marketing in, or in the current of [or in competition with,] or so as *directly* to burden, obstruct, or [in any way] affect, interstate or foreign commerce, sugar manufactured from sugar beets and/or sugarcane, produced in the continental United States beet-sugar-producing area, the States of Louisiana and Florida, and any other State or States in excess of the following quotas, for any calendar year, except as provided for in subsection (2) of this section: United States beet-sugar area, one million five hundred and fifty thousand short tons raw value; the States of Louisiana and Florida, except as may be provided under paragraph (C) of this subsection, two hundred and sixty thousand short tons raw value; and the Secretary of Agriculture may, by orders or regulations, allot such quotas and readjust any such allotment, from time to time, among the processors [handlers], *persons engaged in the handling* of sugar, and others; and/or

As amended by sec. 8 of Public, No. 320, 74th Congress, approved August 24, 1935.

(C) For any calendar year, determine the quota, but not less than the quota provided in paragraph (B), for any area producing less than two hundred and fifty thousand long tons of sugar raw value during the next preceding calendar year; and/or

(D) Establish a separate quota or quotas for edible molasses and/or sirup of cane juice produced in continental United States, in addition to, and/or for edible molasses, sirups, and sugar mixtures produced in any other area or areas to which this title relates, as part of or in addition to, the quotas established pursuant to paragraphs (A) to (C), inclusive, of this subsection, for use as such and not for the extraction of sugar.

(2) (A) The consumption requirements of sugar for continental United States, for the calendar year 1934, and for each succeeding

calendar year, shall be determined by the Secretary of Agriculture from available statistics of the Department of Agriculture. The consumption requirements so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy and the purposes of this Act, be adjusted by him to meet the actual requirements of the consumer as determined by the Secretary.

(B) In the event that available statistics of the Department of Agriculture during the course of any calendar year indicate that the consumption requirements of sugar for continental United States for such calendar year will exceed the amount of the consumption requirements determined for that year, the Secretary of Agriculture may prorate such estimated excess amount on the basis of the respective quotas determined by and pursuant to subsection (1) of this section: *Provided, however*, That for each calendar year there shall be allotted to continental United States not less than 30 per centum of any amount of consumption requirements therefor above six million four hundred and fifty-two thousand short tons raw value.

(C) In the event that available statistics of the Department of Agriculture during the course of any calendar year indicate that the consumption requirements of sugar for continental United States for such year will be less than the amount of the consumption requirements determined for that year, the amount of such deficiency may be proportionately deducted from the respective quotas determined by and pursuant to paragraph (A) of subsection (1) of this section.

(D) If, during any calendar year, any producing area is unable to produce and deliver its full quota of sugar, the Secretary of Agriculture may prorate this deficiency among the other areas on the basis of their respective quotas and ability to supply the deficiency.

(E) Notwithstanding the provisions of paragraphs (A) to (C), inclusive, of subsection (1) of this section, the Secretary of Agriculture may, in order to effectuate the declared policy of this Act, from time to time, by orders or regulations, deduct from the quotas for production, importing, receiving, and/or marketing, and/or from the allotments thereof, established pursuant to said paragraphs, in any given year, an amount for each year, respectively, representing the surplus stocks of sugar produced in that area, or a portion of the total surplus stocks of sugar produced in that area, in whole or in part, which may have accumulated in the year next preceding, over and above the quotas established for such year.

(3) In order more fully to effectuate the declared policy of this Act, as set forth in its declaration of policy, and to insure the equitable division between producers and/or growers and/or the processors of sugar beets or sugarcane of any of the proceeds which may be derived from the growing, processing and/or marketing of such sugar beets or sugarcane, and the processing and/or marketing of the products and byproducts thereof, all agreements authorized by this Act relating to sugar beets, sugarcane, or the products thereof may contain provisions which will limit or regulate child labor, and will fix minimum wages for workers or growers employed by the producers and/or processors of sugar beets and/or sugarcane who are parties to such agreements; and the Secretary, upon the request of any producer, or grower, or worker, or of any association of producers, or growers, or workers, or of any processor, of sugar beets

or sugarcane, is hereby authorized to adjudicate any dispute as to any of the terms under which sugar beets or sugarcane are grown or are to be grown and/or marketed, and the sugar and byproducts thereof are to be marketed. The decision and any determination of the Secretary shall be final.

(4) Any person willfully violating any order or regulation of the Secretary of Agriculture issued under this section shall, upon conviction, be punished by a fine of not more than $100.

(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, the provisions of this section, or of any order, regulation, *or* agreement, [or license] heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

As amended by sec. 9 of Public, No. 320, 74th Congress, approved August 24, 1935.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. *Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.*

As amended by sec. 10 of Public, No. 320, 74th Congress, approved August 24, 1935.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term " person " as used in this title includes an individual, partnership, corporation, association, and any other business unit.

[(2)] *Sec. 8b.* [After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce.] *In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into market-*

ing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

As amended by sec. 4 of Public No. 320, 74th Congress, approved August 24, 1935.

[(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than $1,000 for each day during which the violation continues.]

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or

market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act and standards established thereunder. (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from

any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their production of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner

limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts produced or sold by such producers in such prior period as the Secretary determines to be representative, or upon the current production or sales of such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the bur-

den of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order

issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of

producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such

proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to

any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

As amended by sec. 5 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title.]

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such

officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

DETERMINATION OF BASE PERIOD

Sec. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

As amended by sec. 6 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(5)] *Sec. 8f.* No person engaged in the storage in a public warehouse of any basic agricultural commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and cancellation of such warehouse receipt. Any person violating any of the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. [The Secretary of Agriculture may revoke any license issued under subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this subsection.]

As amended by sec. 7 of Public, No. 320, 74th Congress, approved August 24, 1935.

PROCESSING TAX

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. [When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation.] *When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation;* except that [,] (*1*) in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect

on and after the thirtieth day after the date of the adoption of this amendment [.], *and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the processing tax shall be in effect on and after April 1, 1935.* In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934 the marketing year shall begin January 1, 1934. *In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year.* The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that [rental or benefit payments] *all payments authorized under section 8 which are in effect* are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: *Provided*, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

As amended by secs. 1 and 2 of Public, No. 20, 74th Congress, approved March 18, 1935, and by sec. 11 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that (*1*) if the Secretary has reason to believe that the tax at such rate on the processing of the commodity generally or for any particular use or uses will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties [. If], *and if* thereupon the Secretary finds that any such result will occur, then the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity [.], *and (2) for the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be at the rate of 1 cent per pound or rough rice, subject, however, to any modification of such rate which may be made pursuant to any other provision of this title.* In computing the cur-

rent average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account. *In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.* In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (1) of a ton of sugar beets and (2) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); except that such rate shall not exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, chapter 1.]

As amended by secs. 3 and 4 of Public, No. 20, 74th Congress, approved March 18, 1935.

TAX RATE GENERALLY

(b) (1) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary of Agriculture may determine will result in the collection, in any marketing year with respect to which such rate of tax may be in effect pursuant to the provisions of this title, of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed or made during such period pursuant to section 15 (c) with respect to the commodity and (B) the amount of tax which he estimates would have been collected during such period upon all processings of such commodity which are exempt from tax by reason of the fact that such processings are done by or for a State, or a political subdivision or an institution thereof, had such processings been subject to tax. If, prior to the time the tax takes effect, or at any time thereafter, the Secretary has reason to believe that the tax at such rate, or at the then existing rate, on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, will cause or is causing such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then the Secretary shall cause an appropriate investigation to be made, and afford due

notice and opportunity for hearing to interested parties. If thereupon the Secretary determines and proclaims that any such result will occur or is occurring, then the processing tax on the processing of the commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be at such lower rate or rates as he determines and proclaims will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and the tax shall remain during its effective period at such lower rate until the Secretary, after due notice and opportunity for hearing to interested parties, determines and proclaims that an increase in the rate of such tax will not cause such accumulation of surplus stocks or depression of the farm price of the commodity. Thereafter the processing tax shall be at the highest rate which the Secretary determines will not cause such accumulation of surplus stocks or depression of the farm price of the commodity, but it shall not be higher than the rate provided in the first sentence of this paragraph.

SPECIFIC TAX RATES

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this subsection) in the case of sugarcane and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of this amendment, during the period from such date to December 31, 1937, both dates inclusive.

SPECIFIC TAX RATE—RICE

(3) For the period from April 1, 1935, to July 31, 1936, both inclusive, the processing tax with respect to rice shall be levied, assessed, collected, and paid at the rate of 1 cent per pound of rough rice.

SPECIFIC TAX RATE—MARKETING YEAR—FLOOR STOCKS—RYE

(4) For the period from September 1, 1935, to December 31, 1937, both inclusive, the processing tax with respect to rye shall be levied, assessed, collected, and paid at the rate of 30 cents per bushel of fifty-six pounds. In the case of rye, the first marketing year shall be considered to be the period commencing September 1, 1935, and ending June 30, 1936. Subsequent marketing years shall commence on July 1 and end on June 30 of the succeeding year. The provisions of section 16 of this title shall not apply in the case of rye.

SPECIFIC TAX RATE—FLOOR STOCKS—BARLEY

(5) If at any time prior to December 31, 1937, a tax with respect to barley becomes effective pursuant to proclamation as provided in subsection (a) of this section, such tax shall be levied, assessed, collected, and paid during the period from the date upon which such tax becomes effective to December 31, 1937, both inclusive, at

the rate of 25 cents per bushel of forty-eight pounds. The provisions of section 16 of this title shall not apply in the case of barley.

ADJUSTMENT OF RATE

(6) (A) Any rate of tax which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) on the processing of any commodity generally or for any designated use or uses, or on the processing of the commodity in the production of any designated product or products thereof for any designated use or uses, shall be decreased (including a decrease to zero) in accordance with the formulae, standards, and requirements of paragraph (1) of this subsection, in order to prevent such reduction in the quantity of such commodity or the products thereof domestically consumed as will result in the accumulation of surplus stocks of such commodity or the products thereof or in the depression of the farm price of the commodity, and shall thereafter be increased in accordance with the provisions of paragraph (1) of this subsection but subject to the provisions of subdivision (B) of this paragraph (6).

(B) If the average farm price of any commodity, the rate of tax on the processing of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or is established pursuant to this paragraph (6), during any period of twelve successive months ending after July 1, 1935, consisting of the first ten months of any marketing year and the last two months of the preceding marketing year—

(i) is equal to, or exceeds by 10 per centum or less, the fair exchange value thereof, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 20 per centum of the fair exchange value thereof.

(ii) exceeds by more than 10 per centum, but not more than 20 per centum, the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 15 per centum of the fair exchange value thereof.

(iii) exceeds by more than 20 per centum the fair exchange value thereof, the rate of such tax shall (subject to the provisions of subdivision (A) of this paragraph (6)) be adjusted, at the beginning of the next succeeding marketing year, to such rate as equals 10 per centum of the fair exchange value thereof.

(C) Any rate of tax which has been adjusted pursuant to this paragraph (6) shall remain at such adjusted rate unless further adjusted or terminated pursuant to this paragraph (6), until December 31, 1937, or until July 31, 1936, in the case of rice.

(D) In accordance with the formulae, standards, and requirements prescribed in this title, any rate of tax prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6) shall be increased.

(E) Any tax the rate of which is prescribed in paragraph (2), (3), (4), or (5) of this subsection or which is established pursuant to this paragraph (6), shall terminate pursuant to proclamation as

provided in section 9 (a) of this title or pursuant to section 13 of this title. Any such tax with respect to any basic commodity which terminates pursuant to proclamation as provided in section 9 (a) of this title shall again become effective at the rate prescribed in paragraph (2), (3), (4), or (5) of this subsection, subject however, to the provisions of subdivisions (A) and (B) of this paragraph (6), from the beginning of the marketing year for such commodity next following the date of a new proclamation by the Secretary as provided in section 9 (a) of this title, if such marketing year begins prior to December 31, 1937, or prior to July 31, 1936, in the case of rice, and shall remain at such rate until altered or terminated pursuant to the provisions of section 9 or terminated pursuant to section 13 of this title.

(F) After December 31, 1937 (in the case of the commodities specified in paragraphs (2), (4), and (5) of this subsection), and after July 31, 1936 (in the case of rice), rates of tax shall be determined by the Secretary of Agriculture in accordance with the formulae, standards, and requirements prescribed in this title but not in this paragraph (6), and shall, subject to such formulae, standards, and requirements, thereafter be effective.

(G) If the applicability to any person or circumstances of any tax, the rate of which is fixed in pursuance of this paragraph (6), is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be levied, assessed, collected, and paid (in lieu of all rates of tax fixed in pursuance of this paragraph (6) with respect to all tax liabilities incurred under this title on or after the effective date of each of the rates of tax fixed in pursuance of this paragraph (6)), rates of tax fixed under paragraph (2), (3), (4), or (5), and such rates shall be in effect (unless the particular tax is terminated pursuant to proclamation, as provided in section 9 (a) or pursuant to section 13) until altered by Act of Congress; except that, for any period prior to the effective date of such holding of invalidity, the amount of tax which represents the difference between the tax at the rate fixed in pursuance of this paragraph (6) and the tax at the rate fixed under paragraphs (2), (3), (4), and (5) shall not be levied, assessed, collected, or paid.

RICE—SPECIAL RULE

(7) In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to a processor, except that, where the producer processes his own rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing.

SUGAR—SPECIAL RULE

(8) In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, and in the event that the Secretary increases or decreases the rate

of tax fixed by paragraph (2) of this subsection, pursuant to the provisions of paragraph (6) of this subsection, then the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair exchange value (A) of a ton of sugar beets and (B) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); the rate of tax fixed by paragraph (2) of this subsection or adjusted pursuant to the provisions of paragraph (6) of this subsection shall in no event exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, chapter 1.

WHEAT PREMIUMS

(9) In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account.

As amended by sec. 12 of Public, No. 320, 74th Congress, approved August 24, 1935.

[(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.]

(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and, in the case of all commodities where the base period is the pre-war period, August 1909 to July 1914, will also reflect interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during said base period; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture. The rate of tax upon the processing of any commodity, in effect on the date on which this amendment is adopted, shall not be affected by the adoption of this amendment and shall not be required to be adjusted or altered, unless the Secretary of Agriculture finds that it is necessary to adjust or alter any such rate pursuant to section 9 (a) of this title.

As amended by sec. 13 of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) As used in part 2 of this title—

(1) In case of wheat [, rice,], *rye, barley,* and corn, the term "processing" means the milling or other processing (except clean-

ing and drying) of wheat [, rice,], *rye*, *barley*, or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

Sec. 5 of Public, No. 20, 74th Congress, approved March 18, 1935, strikes out the word "rice"; sec. 14 (a) of Public, No. 320, 74th Congress, approved August 24, 1935, inserts the words "rye, barley".

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

[(5) In case of peanuts, the term "processing" means the cleaning, polishing, grading, shelling, crushing, or other processing thereof.]

Repealed by sec. 14 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

(6) In the case of sugar beets and sugarcane—

(A) The term "first domestic processing" means each domestic processing, including each processing of successive domestic processings, of sugar beets, sugarcane, or raw sugar, which directly results in direct-consumption sugar.

(B) The term "sugar" means sugar in any form whatsoever, derived from sugar beets or sugarcane, whether raw sugar or direct-consumption sugar, including also edible molasses, sirups and any mixture containing sugar (except blackstrap molasses and beet molasses).

(C) The term "blackstrap molasses" means the commercially so-designated "byproduct" of the cane-sugar industry, not used for human consumption or for the extraction of sugar.

(D) The term "beet molasses" means the commercially so-designated "byproduct" of the beet-sugar industry, not used for human consumption or for the extraction of sugar.

(E) The term "raw sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States, in any form whatsoever, for the purpose of being, or which shall be, further refined (or improved in quality, or further prepared for distribution or use).

(F) The term "direct-consumption sugar" means any sugar, as defined above, manufactured or marketed in, or brought into, the United States in any form whatsoever, for any purpose other than to be further refined (or improved in quality, or further prepared for distribution or use).

(G) The term "raw value" means a standard unit of sugar testing ninety-six sugar degrees by the polariscope. All taxes shall be imposed and all quotas shall be established in terms of "raw value" and for purposes of quota and tax measurements all sugar shall be translated into terms of "raw value" according to regulations to be issued by the Secretary, except that in the case of direct-consumption sugar produced in continental United States from sugar beets the

raw value of such sugar shall be one and seven one-hundredths times the weight thereof.

(7) In the case of rice—

(A) The term "rough rice" means rice in that condition which is usual and customary when delivered by the producer to a processor.

(B) The term "processing" means the cleaning, shelling, milling, (including custom milling for toll as well as commercial milling), grinding, rolling, or other processing (except grinding or cracking by or for the producer thereof for feed for his own livestock, cleaning by or directly for a producer for seed purposes, and drying) of rough rice; and in the case of rough rice with respect to which a tax-payment warrant has been previously issued or applied for by application then pending, the term "processing" means any one of the above mentioned processings or any preparation or handling in connection with the sale or other disposition thereof.

(C) The term "cooperating producer" means any person (including any share-tenant or share-cropper) whom the Secretary of Agriculture finds to be willing to participate in the 1935 production-adjustment program for rice.

(D) The term "processor", as used in subsection (b–1) of section 15 of this title, means any person (including a cooperative association of producers) engaged in the processing of rice on a commercial basis (including custom milling for toll as well as commercial milling).

Sec. 6 of Public, No. 20, 74th Congress, approved March 18, 1935, adds section 7.

[(7)] *(8)* In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution or use, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

Sec. 6 of Public, No. 20, 74th Congress, approved March 18, 1935, renumbers paragraph "(7)" to "(8)".

(e) When any processing tax, or increase or decrease therein, takes effect in respect of a commodity the Secretary of Agriculture, in order to prevent pyramiding of the processing tax and profiteering in the sale of the products derived from the commodity, shall make public such information as he deems necessary regarding (1) the relationship between the processing tax and the price paid to producers of the commodity, (2) the effect of the processing tax upon prices to consumers of products of the commodity, (3) the relationship, in previous periods, between prices paid to the producers of the commodity and prices to consumers of the products thereof, and (4) the situation in foreign countries relating to prices paid to producers of the commodity and prices to consumers of the products thereof.

(f) For the purposes of part 2 of this title, processing shall be held to include manufacturing.

(g) Nothing contained in this title shall be construed to authorize any tax upon the processing of any commodity which processing results in the production of newsprint.

Added by sec. 15 of Public, No. 320, 74th Congress, approved August 24, 1935.

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: *Provided*, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: *And provided further*, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

[(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments.]

(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under section 8. The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2) Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by

such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

As amended by sec. 16 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and articles processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(d) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the powers vested in him by this title.

(e) The action of any officer, employee, or agent in determining the amount of and in making any [rental or benefit payment] *payment authorized to be made under section 8* shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

As amended by sec. 17 of Public, No. 320, 74th Congress, approved August 24, 1935.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam. *The President is authorized to attach by Executive order any or all of such possessions to any internal revenue collection district for the purpose of carrying out the provisions of this title.*

As amended by Public, No. 331, 74th Congress, approved August 26, 1935.

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to

any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreements to be commenced and prosecuted in the proper courts of the United States without delay.

(*i*) *The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.*

Added by sec. 18 of Public, No. 320, 74th Congress, approved August 24, 1935.

COMMODITIES

SEC. 11. As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, *potatoes*, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. *As used in this title, the term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.*

As amended by sec. 61 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for [rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title] *payments authorized to be made under section 8*. Such sum shall remain available until expended.

As amended by sec. 19 of Public, No. 320, 74th Congress, approved August 24, 1935.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: *Provided*, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) [In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes.] *In addition to the foregoing, for the purpose of effectuating the declared policy of this title, a sum equal to the proceeds derived from all taxes imposed under this title is hereby appropriated to be available to the Secretary of Agriculture for (1) the acquisition of any agricultural commodity pledged as security for any loan made by any Federal agency, which loan was conditioned upon the borrower agreeing or having agreed to cooperate with a program of production adjustment or marketing adjustment adopted under the authority of this title, and (2) the following purposes under part 2 of this title: Administrative expenses, payments authorized to be made under section 8, and refunds on taxes.* The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

As amended by sec. 3 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of

funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

TERMINATION OF ACT

SEC. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. In the case of sugar beets and sugarcane, the taxes provided by this title shall cease to be in effect, and the powers vested in the President or in the Secretary of Agriculture shall terminate [at the end of three years after the adoption of this amendment] *on December 31, 1937*, unless this title ceases to be in effect at an earlier date, as hereinabove provided. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

As amended by sec. 20 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

SUPPLEMENTARY REVENUE PROVISIONS

EXEMPTIONS AND COMPENSATING TAXES

SEC. 15. (a) If at any time the Secretary of Agriculture finds, upon investigation and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, specifying whether such result will in his judgment most effectively be prevented by a suspension of the imposition of the processing tax or a refund of the tax paid, with respect to such amount of the commodity or any product thereof as is used in the manufacture of such products, and thereafter, as shall be specified in such certification, (1) the imposition of the processing tax shall be suspended with respect to such amount of the commodity as is used in the manufacture of such products, ‖ and thereafter, as shall be specified in such certification, (2) the imposition of the processing tax shall be suspended with respect to such amount of the commodity

as is used in the manufacture of such products [1] until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to interested parties, revokes his certification to the Secretary of the Treasury, or (3) the Secretary of the Treasury shall refund (in accordance with the provisions of, to such persons and in such manner as shall be specified in, such certification) the amount of any tax paid (prior to the date of any revocation by the Secretary of Agriculture of his certification to the Secretary of the Treasury, upon further investigation and after due notice and opportunity for hearing to interested parties) under this title with respect to such amount of the commodity or any product thereof as is used after the date of such certification in the manufacture of such products[.], *or shall credit against any tax due and payable under this title the amount of tax which would be refundable. During the period in which any certificate under this section is effective, the provisions of subsection (e) of this section shall be suspended with respect to all imported articles of the kind described in such certificate; and notwithstanding the provisions of section 21, any compensating taxes, which have heretofore, during the period in which any certificate under this section has been effective, become due and payable upon imported articles of the kind described in such certificate, shall be refunded by the Secretary of the Treasury if the same have been paid, or, if the same have not been paid the amount thereof shall be abated. Notwithstanding the provisions of section 21, the Secretary of the Treasury shall refund or credit any processing tax paid on or before June 12, 1934, with respect to such amount of cotton as was used in the manufacture of large cotton bags (as defined in the Certificate of the Secretary of Agriculture, dated June 12, 1934) between June 13 and July 7, 1934, both inclusive.*

As amended by sec. 21 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

(*b–1*) *The Secretary of Agriculture is authorized and directed to issue tax-payment warrants, with respect to rough rice produced in 1933 and 1934 (provided the processing of such rice is not exempt from the tax, and provided no tax-payment warrant has been previously issued with respect thereto or previously applied for by application then pending, sufficient to cover the tax with respect to the processing thereof at the rate in effect at the time of such issuance, to any processor with respect to any such rice which he has in his possession on March 31, 1935, and to, or at the direction of any other person with respect to any such rice which, on or after April 1, 1935, he delivers for processing or sells to a processor: Provided, That in case any such processor or other person is the producer of such rice (or has received such rice by gift, bequest, or descent from the*

[1] So in original.

producer thereof) that such processor or other person is, if eligible, a cooperating producer: And provided further, That in case such processor or other person is not the producer thereof (nor a person who has received such rice by gift, bequest, or descent from the producer thereof), (a) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, prior to April 1, 1935, such producer received the price prescribed in any marketing agreement, license, regulation, or administrative ruling, pursuant to this title, applicable to the sale of such rice by the producer, and (b) that, if the title to such rice was transferred from the producer thereof, whether by operation of law or otherwise, on or after April 1, 1935, such producer received at least the full market price therefor plus an amount equal to 99 per centum of the face value of tax-payment warrants sufficient to cover the tax on the processing of such rice at rate in effect at the time title was so transferred, and was, if eligible, a cooperating producer.

(b–2) The warrants authorized and directed to be issued by subsection (b–1) of this section—

(1) shall be issued by the Secretary of Agriculture or his duly authorized agent in such manner, at such time or times, at such place or places, in such form, and subject to such terms and conditions with reference to the transfer thereof or the voiding of warrants fraudulently obtained and/or erroneously issued, as the Secretary of Agriculture may prescribe, and the Secretary of Agriculture is authorized to discontinue the further issuance of tax-payment warrants at any time or times and in any region or regions when he shall determine that the rice in any such region or regions can no longer be identified adequately as rice grown in 1933 or 1934; and

(2) shall be accepted by the Collector of Internal Revenue and the Secretary of the Treasury at the face value thereof in payment of any processing tax on rice.

(b–3) (1) Any person who deals or traffics in, or purchases any such tax-payment warrant or the right of any person thereto at less than 99 per centum of its face value shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year or both.

(2) Any person who, with intent to defraud, secures or attempts to secure, or aids or assists in or procures, counsels, or advises, the securing or attempting to secure any tax-payment warrant with respect to rice as to which any tax-payment warrant has been theretofore issued shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(3) Any person who with intent to defraud forges, makes, alters, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification provided for by this title or any regulation issued pursuant thereto, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant or stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants or stamps, tags, or other means of identification,

shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(4) All producers, warehousemen, processors, and common carriers, having information with respect to rice produced in the years 1933 or 1934, may be required to furnish to the Secretary of Agriculture such information as he shall, by order, prescribe as necessary to safeguard the issuance, transfer, and/or use of tax-payment warrants.

(5) The Secretary of Agriculture may make regulations protecting the interests of producers (including share-tenants and sharecroppers) and others, in the issuance, holding, use, and/or transfer of such tax-payment warrants.

Added by sec. 8 of Public, No. 20, 74th Congress, approved March 18, 1935.

(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State or Federal welfare organization, for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered: *Provided, however*, That no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. [No refund shall be allowed under this section unless claim therefor is filed within six months after delivery of the products to the organization for charitable distribution, or use.] The word "State" as used in this section shall include a State and any political subdivision thereof.

As amended by sec. 22 of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors *or producers* thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate

specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

As amended by sec. 23 of Public, No. 320, 74th Congress, approved August 24, 1935.

(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply, whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity *into such an article* at the time of importation: *Provided, (1) That in the event any of the provisions of this title have been or are hereafter made applicable to any possession of the United States in the case of any particular commodity or commodities, but not generally, this title, for the purposes of this subsection, shall be deemed applicable to such possession with respect to such commodity or commodities but shall not be deemed applicable to such possession with respect to other commodities; and* (2) That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control.

As amended by sec. 9 of Public, No. 20, 74th Congress, approved March 18, 1935; and by sec. 24 of Public, No. 320, 74th Congress, approved August 24, 1935.

(f) The President, in his discretion, is authorized by proclamation to decree that all or part of the taxes collected from the processing of sugar beets or sugarcane in Puerto Rico, the Territory of Hawaii, the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam (if the provisions of this title are made applicable thereto), and/or upon the processing in continental United States of sugar produced in, or coming from, said areas, shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund, in the name of the respective area to which related, to be used and expended for the benefit of agriculture and/or paid as rental or benefit payments in connection with the reduction in the acreage, or reduction in the production for market, or both, of sugar beets and/or sugarcane, and/or used and expended for expansion of markets and for removal of surplus agricultural products in such areas, respectively, as the Secretary of Agriculture, with the approval of the President, shall direct.

FLOOR STOCKS

SEC. 16. (a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

(1) Whenever the processing tax first takes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date. Such tax upon articles imported prior to, but in customs custody or control on, the effective date, shall be paid prior to release therefrom. In the case of sugar, the tax on floor stocks, except the retail stocks of persons engaged in retail trade, shall be paid for the month in which the stocks are sold, or used in the manufacture of other articles, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

[(2) Whenever the processing tax is wholly terminated, there shall be refunded to such person a sum (or if it has not been paid, the tax shall be abated) in an amount equivalent to the processing tax with respect to the commodity from which processed.]

(2) Whenever the processing tax is wholly terminated, (A) there shall be refunded or credited in the case of a person holding such stocks with respect to which a tax under this title has been paid, or (B) there shall be credited or abated in the case of a person holding such stocks with respect to which a tax under this title is payable, where such person is the processor liable for the payment of such tax, or (C) there shall be refunded or credited (but not before the tax has been paid) in the case of a person holding such stocks with respect to which a tax under this title is payable, where such person is not the processor liable for the payment of such tax, a sum in an amount equivalent to the processing tax which would have been payable with respect to the commodity from which processed if the processing had occurred on such date: Provided, That in the case of any commodity with respect to which there was any increase, effective prior to June 1, 1934, in the rate of the processing tax, no such refund, credit, or abatement, shall be in an amount which exceeds the equivalent of the initial rate of the processing tax in effect with respect to such commodity.

As amended by sec. 25 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) The tax imposed by subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held at the date the processing tax first takes effect; but such retail stocks shall not be deemed to include stocks held in a warehouse on such date, or such portion of other stocks held on such date as are not sold or otherwise disposed of within thirty days thereafter. [The tax refund or abatement provided in subsection (a) shall not apply to the retail stocks of persons engaged in retail trade, held on the date the processing tax is wholly terminated.] *Except as to flour and prepared*

flour, and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1, and as to any article processed wholly or in chief value from cotton, the tax refund, credit, or abatement provided in subsection (a) of this section shall not apply to the retail stocks of persons engaged in retail trade, nor to any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, nor to any article (except flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1) processed wholly or in chief value from wheat, held on the date the processing tax is wholly terminated.

As amended by sec. 26 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) (1) Any sugar, imported prior to the effective date of a processing tax on sugar beets and sugarcane, with respect to which it is established (under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury) that there was paid at the time of importation a duty at the rate in effect on January 1, 1934, and (2) any sugar held on April 25, 1934, by, or to be delivered under a bona fide contract of sale entered into prior to April 25, 1934, to, any manufacturer or converter, for use in the production of any article (except sugar) and not for ultimate consumption as sugar, and (3) any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, shall be exempt from taxation under subsection (a) of this section, but sugar held in customs custody or control on April 25, 1934, shall not be exempt from taxation under subsection (a) of this section, unless the rate of duty paid upon the withdrawal thereof was the rate of duty in effect on January 1, 1934. [The provisions of paragraph (2) of subsection (a) of this section shall not apply in the case of sugar beets or sugarcane or the products thereof.]

Stricken by sec. 20 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

(d) The Secretary of Agriculture is authorized to purchase, out of such proceeds of taxes as are available therefor, during the period this Act is in effect with respect to sugar beets and sugarcane, not in excess of three hundred thousand tons of sugar raw value from the surplus stocks of direct-consumption sugar produced in the United States beet-sugar area, at a price not in excess of the market price for direct consumption sugar on the date of purchase, and to dispose of such sugar by sale or otherwise, including distribution to any organization for the relief of the unemployed, under such conditions and at such times as will tend to effectuate the declared policy of section 8a of this Act. The sugar so purchased shall not be included in the quota for the United States beet-sugar area. All proceeds received by the Secretary of Agriculture, in the exercise of the powers granted hereby, are appropriated to be available to the Secretary of Agriculture for the purposes described in subsections (a) and (b) of section 12 of this Act.

[(C)] (*e*) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which the existing rate of the processing tax is to be increased, or decreased, that on the date such increase, or decrease, first takes effect with respect to the commodity, is held for sale or other disposition (including articles in transit) by any person, and upon the production of any article from a commodity in process on the date on which the rate of the processing tax is to be increased or decreased, there shall be made a tax adjustment as follows:

(1) Whenever, *subsequent to June 26, 1934*, the rate of the processing tax on the processing of the commodity generally or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is decreased, there shall be credited or refunded to such person an amount equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the decrease in rate and the rate of the processing tax which would have been payable with respect to the commodity from which processed; if the processing had occurred on such date: *Provided, however*, That no such credit or refund shall be made *in the case of hogs* unless the rate of the processing tax immediately preceding said decrease is equal to, or less than, the rate of the processing tax in effect on the date on which any floor stocks tax was paid prior to the adoption of this amendment. *In the case of wheat the provisions of this paragraph and of paragraph (2) of this subsection shall apply to flour, prepared flour and cereal preparations made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1 only; in the case of sugarcane and sugar beets the provisions of this paragraph and of paragraph (2) of this subsection shall apply to sugar only.*

Subsection "(C)" relettered to read subsection "(e)" by section 10 of Public, No. 20, 74th Congress, approved March 18, 1935. The other amendments above are made by section 2 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

(2) Whenever the rate of the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, or as to any class of products, is increased, there shall be levied, assessed and collected a tax to be paid by such person equivalent to the difference between the rate of the processing tax payable or paid at the time immediately preceding the increase in rate and the rate of the processing tax which would be payable with respect to the commodity from which processed, if the processing had occurred on such date.

(3) Whenever the processing tax is suspended or is to be refunded pursuant to a certification of the Secretary of Agriculture to the Secretary of the Treasury, under section 15 (a) of this Act, the provisions of subdivision (1) [of subsection (c) of this section] *of this subsection* shall become applicable.

(4) Whenever the Secretary of Agriculture revokes any certification to the Secretary of the Treasury under section 15 (a) of this Act, the provisions of subdivision (2) [of subsection (c)] *of this subsection* shall become applicable.

(5) The provisions of this amendment shall be effective on and after June 1, 1934.

(f) The provisions of this section shall not be applicable with respect to rice.

As amended by sec. 10 of Public, No. 20, 74th Congress, approved March 18, 1935.

(g) No refund, credit, or abatement of any amount of any tax shall be made or allowed under this section, unless, within one hundred and twenty days after the right to such refund, credit, or abatement accrued, or within one hundred and twenty days after the date of the adoption of this amendment, whichever is the later, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, and no such claim shall be allowed for an amount less than $10.

Added by sec. 27 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

EXPORTATIONS

SEC. 17. (a) [Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the tax due and paid shall be refunded. The refund shall be paid to the exporter or to the consignor named in the bill of lading under which the product is exported, as determined under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.] *Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding.* In the case of sugar beets and sugarcane, this subsection shall be applicable to exports of products

thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term "product" includes any product exported as merchandise, or as a container for merchandise, or otherwise.

As amended by sec. 11 of Public, No. 20, 74th Congress, approved March 18, 1935; and by sec. 28 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or partly therefrom.

EXISTING CONTRACTS

SEC. 18. (a) If (1) any processor, jobber, or wholesaler has, prior to the date a tax with respect to any commodity is first imposed under this title, made a bona fide contract of sale for delivery on or after such date, of any article processed wholly or in chief value from such commodity, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price.

(b) Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be collected and paid to the United States by the vendor in the same manner as other taxes under this title. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner of Internal Revenue who shall cause collections of such taxes to be made from the vendee.

COLLECTION OF TAXES

SEC. 19. (a) The taxes provided in this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: *Provided*, That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding one hundred and eighty days, of the payment of *not exceeding three-fourths of the amount of the* taxes covered by any return under this title, *but postponement of all taxes covered by returns under this title for a period not ex-*

ceeding one hundred and eighty days may be permitted in cases in which the Secretary of the Treasury authorizes such taxes to be paid each month on the amount of the commodity marketed during the next preceding month:

As amended by sec. 29 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) In order that the payment of taxes under this title may not impose any immediate undue financial burden upon processors or distributors, any processor or distributor subject to such taxes shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act.

(*d*) *Under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, any person required pursuant to the provisions of this title to file a return may be required to file such return and pay the tax shown to be due thereon to the collector of internal revenue for the district in which the processing was done or the liability was incurred. Whenever the Commissioner of Internal Revenue deems it necessary, he may require any person or class of persons handling or dealing in any commodity or product thereof, with respect to which a tax is imposed under the provisions of this title, to make a return, render under oath such statements, or to keep such records, as the Commissioner deems sufficient to show whether or not such person, or any other person, is liable for the tax.*

Added by sec. 29 (b) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 20. (a) Whoever in connection with the purchase of, or offer to purchase, any commodity, subject to any tax under this title, or which is to be subjected to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price of the commodity consists of a tax imposed under this title, or (2) ascribing a particular part of the deduction from the market price or the agreed price of the commodity, to a tax imposed under this title, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(b) Whoever in connection with the processing of any commodity subject to any tax under this title, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this title, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misde-

meanor, and upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

(c) Whoever in connection with any settlement, under a contract to buy any commodity, and/or to sell such commodity, or any product or byproduct thereof, subject to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, consists of a tax under this title, or (2) ascribing a particular amount deducted from the gross sales price, in arriving at the basis of settlement under the contract, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount so deducted and/or ascribed to such tax, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not exceeding six months, or both.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined,

prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date

of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the summons, and to produce such books, papers, correspondence, memoranda, or other

records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe). is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

Added by sec. 30 of Public, No. 320, 74th Congress, approved August 24, 1935.

IMPORTS

SEC. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title, he shall cause an immediate investigation to be made

by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, under this title: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exist, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.

Added by sec. 31 of Public, No. 320, 74th Congress, approved August 24, 1935.

RELATED LEGISLATION

[PUBLIC, No. 320, 74TH CONGRESS, APPROVED AUGUST 24, 1935]

(Extracts)

SEC. 38. Nothing contained in this Act shall (a), invalidate any marketing agreement or license in existence on the date of the enactment hereof, or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this Act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to section 8 (1) of the Agricultural Adjustment Act prior to the enactment of this Act, or subsequent to the enactment of this Act in connection with a program the initiation of which has been formally approved by the Secretary of Agriculture under such section 8 (1) prior to the enactment of this Act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this Act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act: *Provided*, That the Secretary shall not prescribe, pursuant to any such agreement or voluntary arrangement, any adjustment in the acreage or in the production for market of any basic agricultural commodity to be made after July 1, 1937 except pursuant to the provisions of section 8 of the Agricultural Adjustment Act as amended by this Act.

Sec. 32. There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce; and (3) finance adjustments in the quantity planted or produced for market of agricultural commodities. The amounts appro-

priated under this section shall be expended for such of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will tend to increase the exportation of agricultural commodities and products thereof, and increase the domestic consumption of agricultural commodities and products thereof: *Provided*, That no part of the funds appropriated by this section shall be expended pursuant to clause (3) hereof unless the Secretary of Agriculture determines that the expenditure of such part pursuant to clauses (1) and (2) is not necessary to effectuate the purposes of this section: *Provided further*, That no part of the funds appropriated by this section shall be used for the payment of benefits in connection with the exportation of unmanufactured cotton.

Sec. 37. There is hereby authorized to be appropriatd the sum of $40,000,000, of which sum $10,000,000 is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to enable the Secretary of Agriculture, under rules and regulations to be promulgated by him and upon such terms as he may prescribe, to eliminate diseased dairy and beef cattle, including cattle suffering from tuberculosis or Bang's disease, and to make payments to owners with respect thereto. The Secretary of Agriculture is authorized to use for scientific experimentation and efforts to eradicate disease in cattle, as much as he finds advisable of the funds appropriated by or in pursuance of the authorization contained in this section and the funds appropriated by the second paragraph of Public Resolution Numbered 27, Seventy-third Congress, approved May 25, 1934, to carry out section 6 of the Act entitled "An Act to amend the Agricultural Adjustment Act so as to include cattle and other products as basic agricultural commodities, and for other purposes", approved April 7, 1934. The sums appropriated or reappropriated by this section shall remain available until June 30, 1936, and such sums and the sums appropriated in pursuance of the authorization contained in this section shall be available to carry out the purposes of both this section and such section 6, and may be used for all necessary expenses in connection therewith, including the employment of persons and means in the District of Columbia and elsewhere. The unexpended balance of the funds appropriated by the second paragraph of such Public Resolution Numbered 27 to carry out the purposes of section 2 of such Act of April 7, 1934, shall remain available for the purposes of such section 2 until June 30, 1936.

Sec. 39. (d) The action of the Secretary of Agriculture in ascertaining and proclaiming, pursuant to section 3 (a) and (b) of such Act, as amended, 10,500,000 bales as the maximum amount of cotton of the crop harvested in the crop year 1935–1936 that may be marketed exempt from payment of the tax levied by such Act, as amended, is hereby legalized and ratified, and all apportionments and other action taken pursuant to such ascertainment and proclamation are legalized and ratified and confirmed as fully to all intents and purposes as if such amount had been fixed and such apportionments and action had been authorized and made effective specifically by Act of Congress.

Sec. 55. There is hereby made available, out of any money appropriated by the Emergency Relief Appropriation Act of 1935, such amount as the President may allot for the development of a national program of land conservation and land utilization. The sums so allotted may be used, in the discretion and under the direction of the President, for the acquisition of submarginal lands and their use for such public purposes as the President shall prescribe.

In carrying out the provisions of this section, the President is authorized:

(a) To make contracts and grants; and

(b) To acquire, by purchase, any real property or any interest therein (with or without reservations) in accordance with the policy herein set forth.

ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Sec. 56. It is hereby declared to be the policy of Congress to insure the maintenance of an adequate supply of anti-hog-cholera serum and hog-cholera virus by regulating the marketing of such serum and virus in interstate and foreign commerce, and to prevent undue and excessive fluctuations and unfair methods of competition and unfair trade practices in such marketing.

Sec. 57. In order to effectuate the policy declared in section 56 of this Act the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with manufacturers and others engaged in the handling of anti-hog-cholera serum and hog-cholera virus only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such serum and virus. Such persons are hereafter in this Act referred to as "handlers." The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful.

Sec. 58. Marketing agreements entered into pursuant to section 57 of this Act shall contain such one or more of the following terms and conditions and no others as the Secretary finds, upon the basis of the hearing provided for in section 57, will tend to effectuate the policy declared in section 56 of this Act:

(a) One or more of the terms and conditions specified in subsection (7) of section 8c of the Agricultural Adjustment Act, as amended.

(b) Terms and conditions requiring each manufacturer to have available on May 1 of each year a supply of completed serum equivalent to not less than 40 per centum of his previous year's sales.

Sec. 59. Whenever all the handlers of not less than 75 per centum of the volume of anti-hog-cholera serum and hog-cholera virus which is handled in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce, have signed a marketing agreement entered into with the Secretary of Agriculture pursuant to section 57 of this Act, the Secretary of Agriculture shall issue an order which shall regulate only such han-

dling in the same manner as, and contain only such terms and conditions as are contained in such marketing agreement, and shall from time to time amend such order in conformance with amendments to such marketing agreement. Such order shall terminate upon termination of such marketing agreement as provided in such marketing agreement.

SEC. 60. Subject to the policy declared in section 56 of this act, the provisions of subsections (6), (7), (8), and (9) of section 8a and of subsections (14) and (15) of section 8c of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with orders issued pursuant to section 59 of this Act, and the provisions of section 8d of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with marketing agreements entered into pursuant to section 57 and orders issued pursuant to section 59 of this Act. The provisions of subsections (a), (b) (2), (c), (f), (h), and (i) of section 10 of the Agricultural Adjustment Act, as amended, are hereby made applicable in connection with the administration of sections 56 to 60, inclusive, of this Act.

DEPARTMENT OF AGRICULTURE APPROPRIATION ACT, 1936

[PUBLIC—No. 62—74TH CONGRESS, APPROVED, MAY 17, 1935]

(Extract)

SEC. 2. The processing tax authorized by Public Act numbered 10, Seventy-third Congress (48 Stat. 31), when levied upon cotton, shall be payable ninety days after the filing of the processor's report: *Provided*, That, under regulations to be prescribed by the Secretary of the Treasury, the time for payment of such tax upon cotton may be extended, but in no case to exceed six months from the date of the filing of the report.

BANKHEAD COTTON ACT OF 1934, AS AMENDED, AS OF AUGUST 27, 1935 [1]

AN ACT

To place the cotton industry on a sound commercial basis, to prevent unfair competition and practices in putting cotton into the channels of interstate and foreign commerce, to provide funds for paying additional benefits under the Agricultural Adjustment Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

That in order to relieve the present acute economic emergency in that part of the agricultural industry devoted to cotton production and marketing by diminishing the disparity between prices paid to cotton producers and persons engaged in cotton marketing and prices of other commodities and by restoring purchasing power to such producers and persons so that the restoration of the normal exchange in interstate and foreign commerce of all commodities may be fostered, and to raise revenue to enable the payment of additional benefits to cotton producers under the Agricultural Adjustment Act—

It is hereby declared to be the policy of Congress to promote the orderly marketing of cotton in interstate and foreign commerce; to enable producers of such commodity to stabilize their markets against undue and excessive fluctuations, and to preserve advantageous markets for such commodity, and to prevent unfair competition and practices in putting cotton into the channels of interstate and foreign commerce, and to more effectively balance production and consumption of cotton.

PERIOD OF APPLICABILITY

SEC. 2. The provisions of this Act shall be effective only with respect to the crop years 1934–1935, but if the President finds that the economic emergency in cotton production and marketing will continue or is likely to continue to exist so that the application of this Act with respect to the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938* is imperative in order to carry out the policy declared in section 1, he shall so proclaim, and this Act shall be effective with respect to the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938*. If at any time prior to the end of the crop year 1935–1936 *or the crop year 1936–1937 or the crop year 1937–1938*, the President finds that the economic emergency in cotton production and marketing has ceased to exist, he shall so proclaim, and no tax under this Act shall be levied with

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Bankhead Cotton Act of 1934, Public, No. 169, 73d Congress, 48 Stat. 598, as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate deleted matter.

respect to cotton harvested after the effective date of such proclamation.

As amended by sec. 39 (a) of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 3. (a) When the Secretary of Agriculture finds, for the crop year 1935–1936, *or the crop year 1936–1937 or the crop year 1937–1938*, if the provisions of this Act are effective for such crop year, that two thirds of the persons who have the legal or equitable right as owner, tenant, share-cropper, or otherwise to produce cotton on any cotton farm, or part thereof, in the United States for such crop year favor a levy of a tax on the ginning of cotton in excess of an allotment made to meet the probable market requirements, and determines that such a tax is required to carry out the policy declared in section 1, the Secretary shall ascertain from an investigation of the available supply of cotton and the probable market requirements of the quantity of cotton that should be allotted, in accordance with the policy declared in section 1, for marketing in the channels of interstate and foreign commerce, from production of cotton during the succeeding cotton crop year, exempt from the payment of taxes thereon. *In ascertaining the sentiment of the producers with respect to the crop year 1936–1937 or the crop year 1937–1938, the vote in favor of the compulsory tax features of this Act, by two-thirds of the producers voting, shall be deemed sufficient for the purposes of this subsection.*

As amended by sec. 39 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) The allotment so ascertained shall be proclaimed by the Secretary of Agriculture at least sixty days prior to the beginning of such succeeding crop year and shall be apportioned by him as herein provided.

(c) For the crop year 1934–1935 ten million bales is hereby fixed as the maximum amount of cotton of the crop harvested in the crop year 1934–1935, that may be marketed exempt from payment of the tax herein levied. Except as provided in section 2, the allotment plan and the tax is hereby declared to be in effect for the crop year 1934–1935.

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market

price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934–1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein

provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

(*h*) *The Secretary of Agriculture is directed to exempt by regulation from the payment of the tax on the ginning of cotton as levied under authority of this Act, an amount of lint cotton not in excess of one hundred and ten pounds, produced by or for any producer and retained for domestic use in his household.*

Added by sec. 42 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPORTIONMENT

SEC. 5. (a) When an allotment is made, in order to prevent unfair competition and unfair trade practices in marketing cotton in the channels of interstate and foreign commerce, the Secretary of Agriculture shall apportion to the several cotton-producing States the number of bales the marketing of which may be exempt from the tax herein levied, which shall be determined by the ratio of the average number of bales produced in each State during the five crop years preceding the passage of this Act to the average number of bales produced in all the States during the same period: *Provided, however,* That no State shall receive an allotment of less than two hundred thousand bales of cotton if in any one year of five years prior to this date the production of the State equalled two hundred and fifty thousand bales: *Provided further, That no State shall receive an allotment for any crop year beginning with the crop year 1935–1936 of less than four thousand bales of cotton if during any one of the ten crop years prior to the date of the enactment of this Act the production of such State exceeded five thousand bales. And be it further provided that after the year 1935 no State shall receive an allotment of less than 80,000 bales of cotton if in any one year of five years prior to the date of the passage of said Act the production of the State equaled 100,000 bales.* It is prima facie presumed that all cotton and its processed products will move in interstate or foreign commerce.

Amended by sec. 39 (c) of Public, No. 320, 74th, Congress, approved August 24, 1935; and by Public Resolution No. 47, 74th Congress, approved August 9, 1935.

(b) The amount allotted to each State (less the amounts allotted under section 8) shall be apportioned by the Secretary of Agriculture to the several counties in such State on a basis and ratio, applied to such counties, similar to that set forth in subsection (a), except that, for the purposes of this subsection, there shall be excluded from the calculation of the average production of cotton in any county an amount of cotton produced in such county during any crop year or years during which the Secretary of Agriculture finds that production of cotton in such county was reduced so substantially by unusual drought, storm, flood, insect pests, or other uncontrollable natural cause that the inclusion of the cotton produced in such crop year or years would result in an apportionment to such county based upon an abnormally low production of such county, and in such cases the average production shall be calculated on the basis of the crop years and production of the years remaining of the period set forth in subsection (a).

APPLICATIONS FOR CERTIFICATES

SEC. 6. A producer of cotton desiring to secure a tax-exemption certificate may file an application therefor with the agent designated by the Secretary of Agriculture, accompanied by a statement under oath showing the approximate quantity of cotton produced on the lands presently owned, rented, share-cropped, or controlled by the applicant during a representative period fixed by the Secretary of Agriculture, and also the number of acres of land in said lands in actual cultivation for the three preceding years, and the quantity of cotton, in the best judgment of the applicant, said lands would have produced if all the cultivated land had been planted to cotton. Said application shall state any other facts which may be required by the Secretary of Agriculture. No certificate of exemption shall be issued and no allotment shall be made to any producer unless he agrees to comply with such conditions and limitations on the production of agricultural commodities by him as the Secretary of Agriculture may, from time to time, prescribe to assure the cooperation of such producer in the reduction programs of the Agricultural Adjustment Administration and to prevent expansion on lands leased by the Government of competitive production by such producer of agricultural commodities other than cotton and the allotment of and certificates of exemption issued to any producer shall be subject to revocation on violation by him of such conditions and limitations, and no criminal penalties shall apply to the violation of this provision.

SEC. 7. (a) The amount of cotton allotted to any county pursuant to section 5 (b) shall be apportioned by the Secretary of Agriculture to farms on which cotton has been grown within such county. Such allotments to any farm shall be made upon application therefor and may be made by the Secretary based upon—

(1) A percentage of the average annual cotton production of the farm for a fair representative period; or

(2) By ascertaining the amount of cotton the farm would have produced during a fair representative period if all the cultivated land had been planted to cotton, and then reducing such amount by such percentage (which shall be applied uniformly within the county to all farms to which the allotment is made under this paragraph) as will be sufficient to bring the total of the farm allotments within the county's allotment; or

(3) Upon such basis as the Secretary of Agriculture deems fair and just, and will apply to all farms to which the allotment is made under this paragraph uniformly, within the county, on the basis or classification adopted. The Secretary of Agriculture, in determining the manner of allotment to individual farmers, shall provide that the farmers who have voluntarily reduced their cotton acreage shall not be penalized in favor of those farmers who have not done so.

(b) After the crop year 1934–1935 the apportionment shall not be on the basis set out in paragraph (1) of subsection (a) of this section.

(c) The total allotment to farms in each county under this section shall not exceed the approximate number of bales allotted to that county under section 5 (b).

(d) For each crop year subsequent to the crop year 1934–1935 in which this Act is in effect the Secretary of Agriculture shall make

(1) to each farm with an established average production for the applicable base period of 956 pounds or less of lint cotton an allotment equal to the full amount of such production and (2) to each farm with an established average production for such base period of more than 956 pounds of lint cotton an allotment of not less than 956 pounds. For each crop year subsequent to the crop year 1935–1936, the amounts of each such allotment (and for the crop year 1935–1936 and subsequent crop years, the additional amount required for apportionment under the provisions of the Public Resolution entitled "Public Resolution To provide for certain State allotments under the Cotton Control Act") which is in excess of the allotment which, without regard to this subsection or such Public Resolution, would have been made to any farm, shall be in addition to the national allotment and the allotments to the State and county in which such farm is situated. The first sentence of this subsection shall not be held to increase any allotment to any farm for the crop year 1935–1936 which allotment was made under regulations of the Secretary of Agriculture prior to the date of the adoption of this amendment, or to require any reallotment.

Added by sec. 39 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 8. Whenever an allotment is made pursuant to section 3, not to exceed 10 per centum of the number of bales allotted to each State shall be deducted from the number of bales allotted to such State, and allotted in such State—

(a) To producers of cotton on farms where for the preceding three years less than one third of the cultivated land on such farms has been planted to cotton;

(b) To producers of cotton on farms not previously used in cotton production;

(c) To producers of cotton on farms where, for the preceding five years, normal cotton production has been reduced by reason of drought, storm, flood, insect pests, or other uncontrollable natural cause; and

(d) To producers of cotton on farms where, for the preceding three years, acreage theretofore planted to cotton has been voluntarily reduced so that the amount of reduction in cotton production on such farms is greater than the amount which the Secretary finds would have been an equitable reduction applicable to such farms in carrying out a reasonable reduction program.

The allotments provided for in this section shall be in addition to the amounts apportioned to the counties under section 5 (b).

EXEMPTION CERTIFICATES

SEC. 9. (a) Exemption certificates shall be issued by the Secretary of Agriculture, upon application therefor, but only upon proof satisfactory to the Secretary that the producer is entitled thereto pursuant to this Act and the regulations thereunder. Any certificate erroneously issued shall be void upon a demand in writing for its return made by the Secretary of Agriculture to the person to whom such certificate was issued.

(b) The right to a certificate of exemption shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe.

(c) The certificate of exemption shall specify the amount of cotton exempt from the tax under section 4 (e) (2).

(d) Any and all certificates of exemption may be transferred or assigned in whole or in part in such manner as the Secretary of Agriculture may prescribe and shall be issued with detachable coupons or in such other form or forms to be prescribed by the Secretary of Agriculture as will facilitate such transfer or assignment. *No rule or regulation of the Secretary of Agriculture shall prohibit the transfer or assignment by a cotton producer of certificates issued or reissued to him if such transfer or assignment is to another cotton producer who is a resident of the same State.* Any person who, in violation of the regulations made by the Secretary of Agriculture, (1) secures certificates of exemption or bale tags from another by sharp practices, or (2) speculates in certificates of exemption or bale tags, and any person securing certificates of exemption or bale tags from another person by fraud or coercion shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than one year's imprisonment, or both.

As amended by sec. 41 of Public, No. 320, 74th Congress, approved August 24, 1935.

IDENTIFICATION OF TAX-PAID OR EXEMPT COTTON

SEC. 10. (a) Upon the payment of the tax on any cotton, or the surrender of exemption certificates covering cotton, the collector receiving such payment or certificates shall deliver to the person so paying or surrendering an appropriate number of bale tags which shall be affixed to such cotton.

(b) All cotton imported from a foreign country (including the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) shall be packed and stamped, tagged, or otherwise identified, in addition to any import stamp indicating inspection at the customhouse, before such cotton is withdrawn therefrom.

(c) Every person who, at the time the tax becomes effective in any crop year, holds for sale (or use in the manufacture or production of an article intended for sale) any lint cotton in bales harvested during a year with respect to which the tax was not in effect may, upon application within fifteen days after the tax becomes effective, and any publicly owned experimental station or agricultural laboratory may, upon application at the time of ginning cotton harvested by it, receive an appropriate number of bale tags. Such bale tags shall be promptly affixed to the bales of lint cotton so held.

(d) In the case of any cotton in existence at the beginning of any crop year with respect to which the tax becomes effective and owned, held, or controlled by the United States, or any department or agency thereof, the Commissioner shall supply bale tags therefor free of charge, upon application by the head of the department or agency. Upon application of the Secretary of Agriculture, bale tags shall be

issued free of charge for cotton held in the 1933 Cotton Producers' Pool. Bale tags issued under this section shall be securely affixed to such cotton.

DESTRUCTION OF MEANS OF IDENTIFICATION

SEC. 11. Every person emptying or breaking any bale stamped, tagged, or otherwise identified under the provisions of this Act shall, at the time of emptying or breaking such bale, destroy the bale tag.

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processors of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

GENERAL AND PENAL PROVISIONS

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufacture thereof, or has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding $200.

REGULATIONS BY THE SECRETARY OF AGRICULTURE

SEC. 15. (a) The Secretary of Agriculture is authorized to make such regulations as may be necessary to carry out the powers vested in him by the provisions of this Act.

(b) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the making of allotments and the issuance of tax-exemption certificates under this Act.

APPROPRIATIONS AUTHORIZED

SEC. 16. (a) There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) Out of the sums available to the Secretary of Agriculture under the Agricultural Adjustment Act, such sums as may be necessary to carry out the provisions of this Act are authorized to be made available.

(c) The proceeds derived from the tax are hereby authorized to be appropriated to be made available to the Secretary of Agriculture for the purposes of carrying out the cotton program of the Agricultural Adjustment Administration, and for administrative expenses and refunds of taxes under this Act.

OFFICERS AND EMPLOYEES

SEC. 17 (*a*) The Secretary of Agriculture is authorized, in order to carry out the provisions of this Act, to appoint, without regard to the provisions of the civil service laws, such officers, agents, and employees, and to utilize such Federal officers and employees, and with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed, except that rates so fixed shall not exceed the rates of compensation prescribed for comparable duties by such Act, as amended.

(*b*) *Appropriations for administrative expenses under this Act are authorized to be made available to enable the Secretary of Agriculture to pay any person, who, in connection with the operation of any cotton gin, incurred additional expenses in connection with the administration of this Act with respect to cotton ginned during the crop year 1935–1936 or any subsequent crop year in which this Act is in effect, and who applies to the Secretary therefor, compensation in the amount of such additional expenses, but not in excess of the rate of 25 cents per bale of such cotton ginned by such person, provided proof satisfactory to the Secretary of Agriculture is furnished that the additional expenses for which such person makes application have not been passed on in any manner whatsoever.*

As amended by sec. 40 of Public, No. 320, 74th Congress, approved August 24, 1935.

PURCHASES AND SERVICES

SEC. 18. The administrative expenses provided for under this Act shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere for law books, periodicals, newspapers, and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to

have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

SEPARABILITY OF PROVISIONS

SEC. 21. If any provision of this Act, or the applicability thereof to any person or circumstance, is held invalid, the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

GEOGRAPHICAL APPLICATION OF ACT

SEC. 22. The provisions of this Act shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam.

DEFINITIONS

SEC. 23. As used in this Act—

(a) The term "person" means an individual, a partnership, joint-stock company, a corporation, or a firm.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means the collector of internal revenue.

(d) The term "ginning" means the separation of lint cotton from seed cotton.

(e) The term "tax" means the tax upon the ginning of cotton imposed by this Act.

(f) The term "lint cotton" means the fiber taken from seed cotton by ginning.

(g) The term "seed cotton" means the harvested fruit of the cotton plant.

(h) The term "bale tag" means nondetachable bale tag, stamp, or other means of identifying tax-paid or exempt cotton.

(i) The term "crop year" means the period from June 1 of one year to May 31 of the succeeding year, both dates inclusive.

The term "bale", when used in sections 3, 5, 7, and 8 to describe a quantity of cotton, means five hundred pounds of lint cotton.

SEC. 24. The Secretary of Agriculture is authorized to develop new and extended uses for cotton, and for such purpose there is authorized

to be made available to the Secretary not to exceed $500,000 out of the funds available to him under section 12 of the Agricultural Adjustment Act.

SEC. 25. (a) No tax-exemption certificates shall be issued to any person not engaged in production of cotton in the crop year during which such certificates are issued.

(b) Whenever after apportionment under sections 7 and 8 any surplus number of bales remain of the amount allotted to any county under section 5 (b) such surplus bales shall be allotted, in such quantities as the Secretary of Agriculture determines, to such other counties within the State as the Secretary of Agriculture determines have an insufficient allotment. Said bales shall be apportioned, pursuant to sections 7 and 8, within the respective counties to which allotted, but in no case shall any farm receive any of such allotment so as to receive a total allotment in excess of its estimated production for the crop year in which such allotment is made.

(c) In computing the production of any State pursuant to section 5 (a) the total production of cotton for such State in the five-year period, 1928–1932, inclusive, shall be used regardless of the length of staple of such production.

Approved, April 21, 1934.

KERR TOBACCO ACT, AS AMENDED AS OF AUGUST 27, 1935.[1]

[AN ACT

To place the tobacco-growing industry on a sound financial and economic basis, to prevent unfair competition and practices in the production and marketing of tobacco entering into the channels of interstate and foreign commerce, and for other purposes.]

An Act to place the tobacco-growing industry on a sound financial and economic basis, to prevent unfair competition and practices in the production and marketing of tobacco entering into the channels of interstate and foreign commerce, to raise revenue, and for other purposes.

As amended by sec. 43 of Public, No. 320, 74th Congress, approved August 24, 1935.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. As used in this Act—

(a) The term "person" includes an individual, a partnership, association, joint-stock company, corporation, or a firm, and imports the plural as well as the singular, as the case demands.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means the collector of internal revenue.

(d) The term "tobacco" means any type or types of tobacco specified in any agreement between the Secretary of Agriculture and a contracting producer.

(e) The term "sale" means the first bona fide sale of each pound of tobacco harvested subsequent to the enactment of this Act.

(f) The term "tax" means the tax imposed by this Act upon the sale of tobacco.

(g) The term "contracting producer" means any person who (pursuant to the provisions of the Agricultural Adjustment Act) agrees in writing with the Secretary of Agriculture to plant not more than the number of acres of tobacco, and/or to market not more than the number of pounds of tobacco, permitted in such agreement.

(h) The term "crop year" means the period May 1 to April 30.

(i) The term "Maryland tobacco" means the kind of air-cured tobacco classified as type 32 in the United States Department of

[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Kerr Tobacco Act, Public, No. 483, 73d Congress, 48 Stat. 1275. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(j) The term "cigar leaf tobacco" means all leaf tobacco classified in classes 4, 5, and 6 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(k) The term "Virginia sun-cured tobacco" means all sun-cured tobacco classified as type 37 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(l) The term "Puerto Rican tobacco" means all leaf tobacco classified as type 46 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

(m) The term "cigar-wrapper tobacco" means all leaf tobacco classified in class 6 in the United States Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements Numbered 118.

Added by sec. 44 of Public, No. 320, 74th Congress, approved August 24, 1935.

DECLARED POLICY

SEC. 2. It is hereby declared to be the policy of Congress to promote the orderly marketing of tobacco in interstate and foreign commerce, to enable producers of tobacco to stabilize their markets against undue and excessive fluctuations, to prevent unfair competition and practices in putting tobacco into the channels of interstate and foreign commerce, and to more effectively balance production and consumption of tobacco, *to raise revenue*, and to relieve the present emergency with respect to tobacco.

As amended by sec. 45 of Public, No. 320, 74th Congress, approved August 24, 1935.

IMPOSITION

SEC. 3. (a) There is hereby levied and assessed on the sale of tobacco with respect to which the tax is applicable a tax at the rate of 33⅓ per centum of the price for which such tobacco is sold: *Provided, however*, That if the Secretary of Agriculture determines and proclaims that the declared policy of this Act is best effectuated thereby, the rate of tax shall, for such period as the Secretary of Agriculture designates, be at such lower rate (not less than 25 per centum of the price for which such tobacco is sold) as he may prescribe.

(b) The tax provided for by subsection (a) of this section shall be applicable to all tobacco harvested in the crop year 1934–1935, except Maryland tobacco, Virginia sun-cured tobacco, and cigar leaf tobacco[. Thereafter whenever the Secretary of Agriculture determines that the persons who own, rent, share crop, or control three-fourths of the land customarily engaged in the production of any particular type of tobacco favor the levy of the tax thereon and that the imposition of the tax thereon is necessary for the orderly marketing of such tobacco in interstate and foreign commerce and to

effectuate the declared policy of this Act, he shall proclaim such determination at least sixty days prior to the next succeeding crop year, and the tax shall thereafter apply to tobacco of such type harvested during the crop year next following the date of such proclamation. The tax provided for by subsection (a) of this section shall not apply to any tobacco harvested after April 30, 1936.] *and to all tobacco harvested in the crop year 1935–1936, except Maryland tobacco, Puerto Rican tobacco, and cigar wrapper tobacco. Thereafter whenever the Secretary of Agriculture determines (1) that the imposition of the tax upon any particular type of tobacco is necessary for the orderly marketing of such tobacco in interstate and foreign commerce and to effectuate the declared policy of this Act, and (2) that two-thirds of the land engaged in the production of such type of tobacco during the crop year in which such determination is made is voted in favor of the levy of the tax upon the sale of such type of tobacco, he shall proclaim such determination at least sixty days prior to the next succeeding crop year, and the tax shall thereafter apply to the sale of tobacco of such type harvested during the crop year next following the date of such proclamation. All persons who have the right, during the crop year in which such determination is made, to sell or to receive a share of the proceeds derived from the sale of tobacco of any type produced by them, or produced on land owned or leased by them, shall be entitled to vote, and the proportion of all the votes cast in each county which are cast in favor of levying the tax upon the sale of such type of tobacco shall determine the proportion of the total amount of tobacco land in such county which shall be deemed to have been voted in favor of levying such tax. The tax provided for by subsection (a) of this section shall not apply to any tobacco harvested after April 30, 1939.*

As amended by sec. 46 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) The provisions of this Act shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam.

EXEMPTIONS

SEC. 4. (a) No tax shall be imposed under this Act—

(1) Upon the tobacco harvested by any publicly owned experimental station or agricultural laboratory; or

(2) Upon tobacco harvested prior to the crop year 1934–1935.

(b) Under such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe, every person who, at the time the tax becomes applicable with respect to any type of tobacco, holds for sale (or use in the manufacture or production of an article intended for sale) any tobacco of such type harvested prior to the crop year 1934–1935 shall cause such tobacco to be tagged, stamped, or otherwise identified as tax-exempt tobacco.

SEC. 5. (a) (*1*) In addition to rental or benefit payments which under any provision of existing law the Secretary of Agriculture is authorized to make in connection with agreements with producers providing for reduction in the acreage or reduction in the production

for market, or both, of any basic agricultural commodity, the Secretary of Agriculture is hereby authorized and directed to issue (in each crop year wherein any type of tobacco is harvested to which the tax is applicable) to each contracting producer nontransferable tax-payment warrants (each such warrant to be expressed in pounds of tobacco of a particular type). Upon surrender of any warrant by any contracting producer to the collector, it shall be accepted by the collector and the Secretary of the Treasury in payment of the tax on any sale by such contracting producer of the type of tobacco specified in the warrant not exceeding in amount the amount of tobacco covered by such warrant. Any contracting producer shall be entitled to receive such warrants covering amounts of any type of tobacco produced by him equal (1) to the number of pounds of tobacco of such type which such contracting producer is permitted to market under any agreement between him and the Secretary of Agriculture, or (2) to the number of pounds of tobacco of such type which the Secretary of Agriculture estimates may be produced on a percentage of a base acreage, which percentage and base acreage shall be determined as provided in any agreement between the Secretary of Agriculture and such contracting producer.

(2) *The Secretary of Agriculture shall issue to any person, who, because of religious or moral scruples, is unwilling or unable to become a contracting producer, similar tax-payment warrants covering the quantity of tobacco produced by such person: Provided, That the Secretary determines that such person has not planted a greater acreage of tobacco nor sold a greater quantity of tobacco than he could have planted or sold as a contracting producer.*

As amended by sec. 47 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) [The Secretary of Agriculture may issue in any county further warrants, covering an amount of tobacco of any type not in excess of 6 per centum of the amount of tobacco of such type covered by the warrants issued to all contracting producers in such county, to persons engaged in the production of tobacco of such type in such county as to whom the Secretary determines that no equitable allotment of tobacco acreage or production is possible under tobacco-reduction contracts offered pursuant to the Agricultural Adjustment Act: *Provided*, That warrants covering two-thirds of the amount of tobacco allotted under the subsection in any county shall be issued to growers whose allotments are 1,500 pounds or less.]

There shall be available for issuance by the Secretary of Agriculture further warrants, covering an amount of tobacco of any type equal to 3 per centum of the amount of tobacco of such type covered by the warrants issuable or issued to all contracting producers under the provisions of subsection (a) of this section, to persons engaged in the production of tobacco of such type who do not enter into such contracts and as to whom the Secretary determines that no equitable allotment of tobacco acreage or production is possible under such tobacco contracts. Such warrants shall be issued, upon application therefor, upon such basis or classification as the Secretary deems will effectuate the declared policy of this Act and will be fair and just, and as will apply to all persons eligible to receive warrants under this subsection uniformly on the basis or classification adopted: Pro-

vided, That warrants covering two-thirds of the amount of any type of tobacco to cover which warrants are available under this subsection shall be issued, upon application therefor, only to persons who receive warrants covering one thousand five hundred pounds or less of any type of tobacco. Warrants issued under this subsection shall be accepted by the collector and the Secretary of the Treasury, upon surrender thereof by the person to whom issued, in payment of the tax on any sale by such person of the type of tobacco specified in the warrant not exceeding in amount the amount of tobacco covered by such warrant.

As amended by sec. 48 of Public, No. 320, 74th Congress, approved August 24, 1935.

(c) Upon application therefor, the warrants provided for by subsections (a) and (b) of this section may be issued by the Secretary of Agriculture, or his duly authorized agent, in such manner, at such time or times, at such place or places, and in such form as the Secretary of Agriculture may prescribe.

(d) [Any tax-payment warrant erroneously issued shall be void upon demand in writing for its return made by the Secretary of Agriculture to the person to whom such warrant was issued.]

If any tax-payment warrant is erroneously issued to any person, or if the Secretary of Agriculture determines pursuant to this subsection that any person to whom any tax-payment warrant is issued has failed to comply in any crop year with any provision of any agreement entered into by such person pursuant to the Agricultural Adjustment Act or has failed to comply with any rule or regulation issued by the Secretary of Agriculture pursuant to this Act or the Agricultural Adjustment Act, any warrant issued during such crop year to such person shall be void upon demand in writing for the return of such warrant made by the Secretary of Agriculture to the person to whom such warrant was issued. If any tax-payment warrant which has been accepted in payment of the tax imposed by this Act upon the sale of tobacco becomes void pursuant to this subsection either before or after such acceptance, the person to whom such warrant was issued shall, notwithstanding such acceptance of such warrant, be liable for the full amount of the tax upon such sale.

As amended by sec. 49 of Public, No. 320, 74th Congress, approved August 24, 1935.

(e) The right to a tax-payment warrant under this section shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe.

(f) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the issuance of tax-payment warrants under this Act.

COLLECTION OF TAXES

SEC. 6. (a) The taxes provided for in this Act shall be paid by the seller and collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. Such taxes shall be paid into the Treasury of the United States.

(b) All provisions of law, including penalties (except section 1121 of the Revenue Act of 1926), applicable with respect to the taxes

imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable in regard to all taxes imposed by this Act.

RULES AND REGULATIONS

SEC. 7. (a) The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe such rules and regulations as he may deem needful for the collection of the tax.

(b) The Secretary of Agriculture is authorized to make such rules and regulations as may be necessary to carry out the powers vested in him by the provisions of this Act.

INFORMATION RETURNS

SEC. 8. (a) All producers, warehousemen, processors of tobacco, and common carriers, having information with respect to tobacco produced or sold, may be required to make a return in regard thereto, setting forth the amount of tobacco produced, sold, or delivered, the name and address of the person who produced, sold, or delivered said tobacco, or to whom said tobacco was sold or delivered, the price paid on such sale, and any other and further information which the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall by regulations prescribe as necessary for the collection of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner of Internal Revenue.

[(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.]

(b) All persons, in whatever capacity acting, including producers, warehousemen, processors of tobacco, and common carriers, having information with respect to tobacco produced or sold, may be required to make a return in regard thereto, setting forth the amount of tobacco produced, sold, or delivered, the name and address of the person who produced, sold, or delivered said tobacco, or to whom said tobacco was sold or delivered, the price paid on such sale, and any other and further information which the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration and collection of the tax. Any person required to make any such return shall render a true and accurate return to the Commissioner of Internal Revenue.

(c) Any person willfully failing or refusing to file any return required to be filed under this section, or filing willfully any false return, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

As amended by sec. 50 of Public, No. 320, 74th Congress, approved August 24, 1935.

GENERAL AND PENAL PROVISIONS

SEC. 9. (a) No tax-payment warrant issued in accordance with this Act may be transferred or assigned either in whole or in part, except by the executor or other legal representative of a deceased producer to whom a tax-payment warrant has been issued under this Act. Any person who acquires a tax-payment warrant from another person or who transfers a tax-payment warrant to another person in violation of the provisions of this Act, or who violates any provision of this Act, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than six months' imprisonment, or both.

(b) Any person who, with intent to defraud, forges, makes, or counterfeits any tax-payment warrant or any stamp, tag, or other means of identification made or used under this Act, or makes any false entry upon such warrant or any false statement in any application for the issuance of such warrant, or who uses, sells, lends, or has in his possession any such altered, forged, or counterfeited warrant, stamp, tag, or other means of identification, or who makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such warrants, stamps, tags, or other means of identification, or who makes any false statement in any application with respect to the levying and collection of the tax, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or both.

(c) Any person who is authorized in writing by the Secretary of Agriculture to act as his agent in the administration of this Act shall, while he is acting as such agent, have the power to administer oaths in connection with the execution of forms required by regulations issued pursuant to sections 7 and 8 of this Act, but no fee or compensation shall be charged or received by any such agent for administering such an oath.

Added by sec. 51 of Public, No. 320, 74th Congress, approved August 24, 1935.

APPROPRIATIONS AND ADMINISTRATIVE EXPENSES

SEC. 10. (a) [The proceeds derived from the tax are hereby appropriated to be available to the Secretary of Agriculture for administrative expenses and refunds of taxes and other payments under this Act.] *The proceeds heretofore and hereafter derived from the tax are hereby appropriated to be available to the Secretary of Agriculture for rental and benefit payments under the Agricultural Adjustment Act to contracting producers, for administrative expenses, refunds of taxes, redemption of tax-payment warrants heretofore or hereafter received by contracting producers subsequent to the sale of the tobacco covered by said warrants and subsequent to payment of the tax imposed upon such sale by section 3 of this Act, and other payments under this Act.* The Secretary of Agriculture and the Secretary of the Treasury shall estimate from time to time the amount of the tax which will be collected during a period following any such estimate not in excess of four months, and the Secretary

of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

As amended by sec. 52 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) Out of the sums available to the Secretary of Agriculture under the Agricultural Adjustment Act, as amended, such sums as may be necessary for administrative expenses, refunds of taxes, and other payments under this Act are hereby made available.

(c) The Secretary of Agriculture is authorized in order to carry out the provisions of this Act to appoint, without regard to the provisions of the civil-service laws, such officers, agents, and employees, and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers, agents, and employees so appointed.

(d) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books, periodicals, newspapers, and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law.

(e) The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this Act, such sums as are required to pay administrative expenses incurred and refunds made by such Department or agencies in the administration of this Act.

REFUNDS

SEC. 11. (a) No refund of any tax, penalty, or interest paid under this Act shall be allowed unless claim therefor is presented within [six months] *one year* after the date of payment of such tax, penalty, or interest.

As amended by sec. 53 of Public, No. 320, 74th Congress, approved August 24, 1935.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, under this Act; but such suit or proceeding may be maintained whether or not such tax, penalty, or interest has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months

from the date of filing such claim, unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or interest, unless such suit or proceeding is begun within two years after the disallowance of the claim or of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by mail.

SEPARABILITY OF PROVISIONS

SEC. 12. If any provision of this Act, or the applicability thereof to any person or circumstance, is held invalid the remainder of this Act and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby.

TERMINATION

SEC. 13. The tax shall terminate with respect to any type of tobacco at the end of the crop year current at the time the Secretary of Agriculture proclaims that rental and/or benefit payments under the Agricultural Adjustment Act are to be discontinued with respect to such type of tobacco or whenever the President finds and proclaims that the national economic emergency with respect to such type of tobacco has ended, whichever is the earlier.

SEC. 14. [The Secretary of Agriculture is directed not to refuse on the ground of lateness any offer by a tobacco producer to become a contracting producer, if such offer is filed with the Secretary of Agriculture within thirty days after the date of the enactment of this Act.]

The Secretary of Agriculture is directed not to refuse on the ground of lateness any offer by a tobacco producer to become a contracting producer, if such offer is filed with the Secretary of Agriculture within thirty days after the date of the proclamation by the Secretary of Agriculture, pursuant to subsection (b) of section 3 of this Act.

As amended by sec. 54 of Public, No. 320, 74th Congress, approved August 24, 1935.

SEC. 15. Having due regard to the welfare of domestic producers of tobacco and to the protection of domestic consumers thereof and to a just relation between the price received by such domestic producers and the price paid by such domestic consumers and in other respects to effectuate the declared policy of this Act, the Secretary of Agriculture may from time to time, by orders or regulations:

(A) For each crop year in which any type of tobacco is harvested to which the tax is applicable, or for any part of such crop year, establish quotas for the importation into continental United States of cigar-leaf types of tobacco, and during such crop year readjust any such quotas. Such quotas shall be based on average quantities of such tobacco imported into continental United States during the crop years 1932–1933 and 1933–1934, except that in the case of tobacco imported from the Republic of Cuba, such quotas shall be based on average quantities of tobacco so imported during the crop years 1928–1933.

(B) Allot the quotas provided for by subsection (A) to the importers of such tobacco in the United States in such manner as he may deem fair and equitable, having due regard to the respective amounts of tobacco imported during the crop years 1932–1933 and 1933–1934 by such persons.

SEC. 16. After importation quotas therefor have been established, all cigar-leaf tobacco of any type imported into continental United States in excess of the quota for such type shall be subject to an import tax. The rate of the import tax, expressed in cents per pound, shall be determined by the Secretary of Agriculture as hereinafter provided. On May 1 of each crop year for which quotas are to be established pursuant to section 15, the Secretary of Agriculture shall determine (from available statistics of the Department of Agriculture) the average sales price per pound, during the preceding twelve months, of all domestic cigar-leaf tobacco the sale of which is to be taxed during the ensuing crop year under this Act. This average sales price, times the average per centum tax rate then current under this Act on the sale of such domestic cigar-leaf tobacco, shall be the rate per pound of the import tax and shall be proclaimed by the Secretary of Agriculture. The import tax shall be paid prior to the release of the tobacco subject thereto from customs custody or control.

As used in this and the preceding section "cigar-leaf types of tobacco" shall include cigars, which for the purposes of the quotas, allotments, and import tax provided for by said sections shall be translated into terms of raw cigar-leaf tobacco of the respective types from which such cigars are produced, pursuant to conversion factors established and proclaimed by the Secretary of Agriculture.

Approved, June 28, 1934.

POTATO ACT OF 1935

[BEING TITLE II OF "AN ACT TO AMEND THE AGRICULTURAL ADJUSTMENT ACT, AND FOR OTHER PURPOSES", APPROVED AUGUST 24, 1935, PUBLIC, NO. 320, 74TH CONGRESS]

TITLE II

DEFINITIONS

SEC. 201. When used in this title, unless the context otherwise requires—

(a) The term "person" includes an individual, a corporation, a partnership, a business trust, a joint-stock company, an association, a syndicate, group, pool, joint venture, or any other unincorporated organization or group.

(b) The term "Commissioner" means the Commissioner of Internal Revenue.

(c) The term "collector" means a collector of internal revenue.

(d) The term "sale" includes any agreement or delivery whereby the seller transfers the property in, or right to consume, potatoes to another for a consideration, and any sum of money, services, property, or anything of value whatsoever, may constitute consideration for such transfer, but does not include the transfer of the right to consume potatoes to a member of the household of ap roducer of such potatoes or a transfer for consumption by the household of a person employed in the farming operations of the producer of such potatoes.

(e) The term "allotment year" means the period commencing December 1 and ending November 30: *Provided*, That the first allotment year shall commence December 1, 1935, and shall end November 30, 1936.

(f) The term "change in the form of potatoes" means an intentionally effected change in the form of potatoes in preparation for the sale of such potatoes, or any product thereof, as such change is defined by rules and regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury.

(g) The term "tax stamp" means an appropriate stamp or other means of identifying potatoes with respect to which a tax levied by this title has been paid.

(h) The term "tax-exemption stamp" means an appropriate stamp or other means of identifying potatoes with respect to which an exemption from a tax levied by this title has been established.

(i) The term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.

(j) The term "producer" means a person who has the right to sell, or to receive a share of the proceeds derived from the sale of, potatoes cultivated by him, or on land owned or leased by him.

(k) The term "continental United States" means the several States of the United States and the District of Columbia and does not include any Territory or possession of the United States.

(l) The term "operator" means any person operating his own farm, any tenant operating a farm rented for cash or for a fixed-

commodity payment, any crop-share tenant, and any crop-share landlord.

(m) The term "farm" means all the land operated by the producer as a single operating unit with work stock, farm machinery, and labor substantially separate from that of any other tract of land.

IMPOSITION OF THE TAX

SEC. 202. (a) There is hereby levied and assessed upon each first sale of potatoes harvested on or after December 1, 1935, in the continental United States a tax, to be paid by the seller, at the rate of three-fourths of 1 cent per pound: *Provided*, That when there is a change in the form of potatoes harvested on or after December 1, 1935, in the continental United States prior to the first sale thereof, a tax at the rate of three-fourths of 1 cent per pound, to be paid by the owner at the time such change is effected, is hereby levied and assessed upon the effecting of such change, and no tax shall be levied upon the first sale of such potatoes or any product or products thereof.

(b) If the Secretary of Agriculture finds at any time that the total apportionments to producers in any potato-producing region or regions (as established and defined pursuant to subsection (c) of section 209 of this title) are in excess of the probable supply of potatoes in the continental United States during the marketing periods for such region or regions, he shall proclaim such determination, and the provisions of this title shall not be operative during such marketing periods.

(c) At least thirty days prior to the beginning of each allotment year after the first allotment year, the Secretary of Agriculture shall conduct a referendum which will afford to producers of potatoes a reasonable opportunity to vote in favor of or in opposition to continuing in effect with respect to potatoes produced during the succeeding allotment year the taxes levied by subsection (a) of this section. Each producer who is entitled to an allotment for the last allotment year for which such apportionments were made shall be entitled to one vote; and such taxes shall not be in effect and the provisions of this title shall not be operative with respect to potatoes produced in such succeeding year unless the majority of the votes cast in such referendum are cast in favor of continuing such taxes in effect.

(d) If the Secretary of Agriculture determines and proclaims that the taxes levied by subsection (a) of this section will at the rate therein specified for such taxes, (1) tend to adversely affect the orderly marketing of potatoes, or (2) tend to depress the farm price of potatoes, or (3) tend to cause to producers of potatoes disadvantages in competition by reason of an excessive shift in consumption from potatoes to some other commodity or commodities, then the rate of such taxes shall for such period as the Secretary of Agriculture designates, be at the highest rate which is lower than three-fourths of 1 cent (not less than one-half of 1 cent per pound) as he finds and proclaims will not adversely affect such orderly marketing, or cause such depression of the farm price, or cause such disadvantages in competition.

(e) The taxes levied by subsection (a) of this section shall be represented by tax stamps, and the proceeds of taxes levied under this title shall be paid into the Treasury of the United States as internal revenue collections.

(f) The Commissioner shall cause to be prepared, for the payment of such taxes, tax stamps of suitable denominations and shall furnish same to the collectors of internal revenue. The Commissioner shall also furnish to the Postmaster General without prepayment a suitable quantity of such stamps to be distributed to, and kept on sale by, the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of, and render accounts to, the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal revenue collections.

ALLOTMENTS

SEC. 203. The Secretary of Agriculture shall investigate probable production and market conditions for each allotment year and shall determine from available statistics of the Department of Agriculture and proclaim, at least thirty days prior to the beginning of each allotment year, the quantity of potatoes which, if produced during such year and sold during or after such year, will, in his opinion, tend to establish and maintain such balance between the production, sale, and consumption of potatoes and the marketing conditions therefor as will, in his opinion, tend to establish prices to potato producers at a level that would give potatoes a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of potatoes in the period August 1919–July 1929 without reducing the total net income of potato producers from potatoes below the largest probable income of potato producers from potatoes produced during such allotment year, and without tending to cause to producers of potatoes disadvantages in competition by reason of an excessive shift in consumption from potatoes to some other commodity or commodities; and the quantity so proclaimed shall, for each allotment year, be apportioned by the Secretary of Agriculture as hereinafter provided.

SEC. 204. When a quantity is determined in accordance with section 203 of this title, the Secretary of Agriculture shall apportion such quantity among the several States. The apportionment to each State shall be determined on the basis of the ratio that the annual average acreage of the four years in which the highest potato acreage was harvested in such State in the years 1927–1934, inclusive, multiplied by the average yield per acre for the four years that the yield of potatoes per acre for such State was highest in the years 1927–1934, inclusive, multiplied by the average annual percentage of the crop produced in such State during the years 1929–1934, inclusive, which was sold, bears to the sum of the products of such average acreages, such average yields, and such percentages of sales for all States:

Provided, That if the Secretary of Agriculture finds that the application of the foregoing formula alone would, because of differences in production practices and marketing practices among the several States, result in an inequitable and unfair apportionment to any State or States, not in excess of 2 per centum of the quantity of potatoes determined in accordance with section 203 of this title may be deducted from such quantity and may be used by the Secretary of Agriculture to adjust on the basis of equity and fairness the apportionments made or to be made to any State or States.

SEC. 204a. The quantity determined and proclaimed by the Secretary of Agriculture pursuant to Section 203, and the quantity apportioned to each State pursuant to Section 204, may at such intervals as the Secretary of Agriculture finds necessary to effectuate the declared policy and purposes of this Act be adjusted by him: *Provided*, That the quantity so determined and proclaimed shall not be increased or decreased by more than 5 per cent.

SEC. 205. Ninety-five per centum of the quantity of potatoes apportioned to any State pursuant to section 204 of this title shall be apportioned by the Secretary of Agriculture to farms on which potatoes have been grown within such State during any one or more years within the period 1932–1934, inclusive. Such apportionment to any farm shall be made upon application therefor and may, in order to secure equitable apportionments to producers, be made by the Secretary based upon either—

(1) A percentage of the average sales of potatoes produced on such farm for a representative base period, prescribed by the Secretary, of any two or more years during the years 1932–1934, inclusive, providing the operators of such farm for the allotment year for which the apportionment is made produced potatoes on such farm during at least one of the base-period years. The representative base period prescribed by the Secretary and the percentage applied to the average sales of potatoes produced during such period in establishing apportionments for each farm under this paragraph shall, so far as practicable, be uniform for farm similarly situated upon the basis or classification prescribed by the Secretary of Agriculture, but in the case of any farm for which such average sales are 300 pounds or less, such average sales shall be exempt from any percentage reduction thereof and such farm shall receive an apportionment equal to such average sales; or

(2) Such basis as the Secretary of Agriculture deems fair and just and will apply to all farms to which an apportionment is made under this paragraph 2 uniformly on the basis or classification adopted. In making an apportionment to a farm under this paragraph, due consideration shall be given to the quantity of potatoes produced and sold in the past by the operators who will operate such farm for the allotment year for which the apportionment is made, the quantity of potatoes produced on such farm and sold in the past, and the acreage of the farm available for the production of potatoes and which the operators are currently equipped to devote to the production of potatoes.

SEC. 206. Not in excess of 5 per centum of the quantity of potatoes apportioned to any State pursuant to section 204 of this title shall, upon application therefor, be available for apportionment by the

Secretary of Agriculture to farms operated by persons engaged or evidencing a desire to engage in the production and sale of potatoes in such State and which farms are ineligible to receive an apportionment under section 205 or in respect to which the Secretary of Agriculture determines that the apportionments made pursuant to section 205 are inequitable: *Provided*, That apportionments under this section shall be made upon such basis as the Secretary of Agriculture deems fair and just and which will, so far as practicable, apply to all such farms uniformly upon the basis or classification prescribed by the Secretary. Any quantity not apportioned under this section shall be available for apportionment under section 205 of this title.

SEC. 207. If an apportionment is made to a farm under section 206 of this title for any allotment year, for each succeeding allotment year that the operation of such farm is continued by the operators who operated it during the allotment year for which such apportionment was made, the apportionment to such farm shall be made upon the basis provided in section 206 of this title but shall be made from the quantity available for apportionment under section 205 of this title.

SEC. 208. For the purposes of the apportionments to be made pursuant to sections 204, 205, 206, and 207 of this title, the District of Columbia shall be considered as a part of the State of Maryland.

SEC. 209. (a) The Secretary of Agriculture, or any agent or agency designated for such purpose by the Secretary of Agriculture, shall, upon application therefor, issue for each farm tax-exemption stamps for an amount of potatoes equal to the apportionment made to such farm pursuant to sections 205, 206, and 207 of this title: *Provided*, That under such regulations as the Secretary of Agriculture shall prescribe he shall refuse to issue such tax-exemption stamps to any applicant in any allotment year in which such applicant is not a bona fide producer of potatoes. Each such tax-exemption stamp, during the period of its validity as determined pursuant to subsection (c) of this section, shall establish an exemption from the taxes imposed by subsection (a) of section 202 of this title for the amount of potatoes stated on the face of each such stamp.

(b) The right to tax-exemption stamps shall be evidenced in such manner as the Secretary of Agriculture may by regulations prescribe, and such tax-exemption stamps shall be issued in such form or forms, and under such terms and conditions as may be prescribed jointly by the Secretary of Agriculture and the Secretary of the Treasury.

(c) The Secretary of Agriculture shall establish and define potato-producing regions for the continental United States upon the basis of the marketing periods for potatoes produced in such regions during an allotment year, and shall from time to time by regulation and upon the basis of such marketing periods for each such region, determine and fix the period during which tax-exemption stamps issued, or pursuant to subsection (g) of this section transferred, to producers in such regions for any allotment year shall be valid, provided that all tax-exemption stamps shall be valid for a period of at least the allotment year for which they are issued.

(d) If any tax-exemption stamp is erroneously issued, the person to whom such stamp is so issued shall, upon demand by the Secre-

tary of Agriculture in writing and mailed to the last-known address of such person, be obligated to return such stamp or pay to the Secretary a sum equal to the amount of the taxes imposed by subsection (a) of section 202 of this title upon the amount of potatoes covered by such stamp, at the rate in effect at the time such stamp was issued.

(e) Any sale, assignment, pledge, or transfer, and any agreement or power of attorney to sell, assign, apply, pledge, or transfer made or entered into by any person of his right to or claim for tax-exemption stamps or any part thereof not accompanied by actual delivery of such stamps shall, for all purposes, be null and void; except agreements between landlords and share-tenants or share-croppers which, in accordance with such regulations as the Secretary of Agriculture shall prescribe, provide for a division of the tax-exemption stamps received or to be received by any such landlord, any such share-tenant or any such share-cropper, or any or all of them, in accordance with their respective shares in the potatoes or the proceeds thereof to be produced by them.

(f) Where a farm is operated by share-tenants, or with the aid of share-croppers, tax-exemption stamps issued for an apportionment made to such farm shall be used by the landlord, the share-tenants, and/or the share-croppers in accordance with their respective shares in the potatoes produced on such farm, during the allotment year for which such apportionment is made, or the proceeds of such potatoes, and the Secretary of Agriculture shall issue regulations protecting the interests of share-croppers and tenants in the issuance and use of such tax-exemption stamps.

(g) If accompanied by delivery thereof, tax-exemption stamps may be transferred or assigned in such manner and upon such terms and conditions, including conditions governing the consideration which must be given therefor, as the Secretary of Agriculture may determine are reasonably necessary to prevent (1) transfers and assignments which would tend to depress the market price for potatoes produced in any potato-producing area, (2) speculation in tax-exemption stamps, or (3) fraud or coercion in the transfer of such stamps, or which the Secretary of Agriculture finds to be necessary or desirable to facilitate the identification of tax-paid or tax-exempt potatoes or which the Secretary of Agriculture finds to be necessary or desirable to protect the interests of tenants and share-croppers in the issuance and use of tax-exemption stamps.

SEC. 210. Tax-exemption stamps issued to a person, and a person's right to and claim for, tax-exemption stamps shall be exempt from the claims of the creditors of such person and from any and all process for the enforcement of such claims. The Secretary of Agriculture shall by regulation provide for the issuance to, and/or use by, the person who by devise, bequest, or descent becomes the owner of potatoes planted by a person dying during an allotment year, of the tax-exemption stamps which have been, or would have been, issued to such deceased person for such allotment year.

PACKAGING

SEC. 211. (a) To facilitate the collection of the tax upon the first sale of potatoes imposed by subsection (a) of section 202 of this title, all potatoes harvested on and after December 1, 1935, and sold in the

continental United States, during any period such tax is in effect, shall, in accordance with such rules and regulations as the Commissioner with the approval of the Secretary of the Treasury shall prescribe, be packed in closed and marked containers to which shall be attached or affixed tax stamps or tax-exemption stamps equal in face value to the amount of tax per pound in effect on the potatoes contained therein: *Provided*, That, subject to such regulations as the Commissioner with the approval of the Secretary of the Treasury may prescribe, packaging may be postponed beyond the time of the first sale of potatoes which are to be stored in bulk, or which are to be graded, at such places as may be designated by regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury. The time and method of such packaging and the time and method of attaching or affixing such stamps and the time and circumstances under which packages may be broken shall be established in accordance with such regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe as desirable or necessary to facilitate the collection of the taxes levied by this title. In prescribing and approving rules and regulations for the packaging of potatoes and the attaching or affixing of stamps, the Commissioner and the Secretary of the Treasury shall give due weight to the customs of the industry.

(b) To facilitate the collection of the tax upon a change in the form of potatoes imposed by subsection (a) of section 202 of this title, the Commissioner, with the approval of the Secretary of the Treasury, is authorized by regulation to prescribe appropriate means of identifying potatoes, the change of form of which is subject to such tax, and for the identification of the products of such potatoes.

RULES AND REGULATIONS

SEC. 212. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe and publish such rules and regulations as he may deem needful in administering provisions of this title relating to the revenue including rules and regulations for the issue, sale, custody, production, cancelation, destruction, and disposition of tax stamps and the cancelation and destruction of tax-exemption stamps, and the substitution or replacement of tax stamps in cases of loss, destruction, or defacement thereof.

SEC. 213. The Secretary of Agriculture is authorized to make such rules and regulations as may be necessary to carry out the powers vested in him by the provisions of this title.

SEC. 214. (a) All producers, warehousemen, processors, carriers, retailers, factors, handlers, and any other person who the Commissioner has reason to believe to have information with respect to potatoes produced, or sold, or subject to a tax on a change in the form of potatoes, may be required, under regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture, to make such returns, render such statements, give such information, and keep such records as they may deem necessary for the proper administration of this title.

(b) Any person willfully failing or refusing to file such a return, render such statement, give such information, or keep such records, or filing a willfully false return, or rendering or giving willfully false statements or information or willfully keeping false records,

shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

REFUNDS

SEC. 215. (a) No refund of any tax, penalty, interest, or sum of money paid shall be allowed under this title unless claim therefor is presented within one year after the date of payment of such tax, penalty, interest, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this title alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner illegally or wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after such disallowance, notify the taxpayer thereof by registered mail.

(c) The amount of the taxes imposed by subsection (a) of section 202, paid by a person, which taxes would not have been paid had the tax-exemption stamps to which such person was entitled been delivered to such person prior to the payment of such taxes, shall be refunded to such person.

APPROPRIATION

SEC. 216. (a) The proceeds derived from the taxes imposed by this title are hereby authorized to be appropriated to be available to the Secretary of Agriculture for administrative expenses, for all purposes of the Agricultural Adjustment Act, as amended, for refunds of taxes and for other payments under this title. The Secretary of Agriculture and the Secretary of the Treasury shall estimate from time to time the amount of taxes which will be collected under this title during a period following any such estimate not in excess of four months, and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection: *Provided*, That all taxes imposed by section 230 of this title, collected upon potatoes coming from the possessions or territories of the United States, shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the treasuries of the said possessions and territories, respectively, to be used and expended by the governments thereof for the benefit of agriculture.

(b) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books, periodicals, newspapers, and books of references, for contract stenographic reporting services, for the purchase or hire of vehicles, including motor vehicles, and for printing and paper in addition to allotments under the existing law.

(c) The Secretary of Agriculture may advance or transfer to the Treasury Department, to the Post Office Department, and to any other department or agency, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses of, and refunds made by, such departments or agencies in the administration of this title.

(d) There is hereby authorized to be appropriated to be available to the Secretary of Agriculture such sums as may be necessary for administrative expenses, for refunds of taxes, and for other advances or payments under this title.

GENERAL AND PENAL PROVISIONS

SEC. 217. If at any time the Secretary of Agriculture finds that any product or products manufactured from potatoes is of such low value, considering the quantity of potatoes used for its manufacture, that the imposition of the taxes imposed by subsection (a) of section 202 of this title would prevent wholly or in large part the use of potatoes in the manufacture of such product or products or that potatoes used for the feeding of livestock are of such low value that the imposition of such taxes would prevent wholly or in large part the sale of potatoes for any such use, the Secretary of Agriculture shall proclaim such finding and thereafter in accordance with regulations prescribed jointly by the Secretary of Agriculture and the Secretary of the Treasury, the sale, or change in form, of potatoes for such use or uses by the purchaser thereof shall be exempt from the provisions of subsection (a) of section 211, and from the taxes imposed by subsection (a) of section 202 of this title until such time as the Secretary of Agriculture, after further investigation and due notice and opportunity for hearing to the interested parties, revokes such proclamation: *Provided*, That the right to any such exemption shall be evidenced in such manner as joint regulations of the Secretary of Agriculture and the Secretary of the Treasury shall prescribe. If such puchaser uses any potatoes sold to him free of tax under this section or uses any product of such potatoes, for other than an exempt use as above specified, then he shall be liable for a tax in the same manner as if such potatoes were sold by him at a first sale.

SEC. 218. The Secretary of Agriculture is authorized, in order to carry out the provisions of this title, to appoint, without regard to the provisions of the civil-service law, such officers, agents, and employees and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers, agents, and employees so appointed.

SEC. 219. (a) For the more effective administration of the functions vested in him by this title, the Secretary of Agriculture is

authorized to utilize committees and associations heretofore or hereafter established pursuant to subsection (b) of section 10 of the Agricultural Adjustment Act, as amended, and to establish regional, State, and local committees and associations of producers of potatoes.

(b) The Secretary of Agriculture, out of any funds appropriated for administrative expenses under this title, is authorized to advance funds to the proper fiscal officer of associations established or utilized pursuant to subsection (a) of section 219 of this title, for expenses incurred or to be incurred in the administration of this title, with the approval of the Secretary of Agriculture by such associations. Payment of such expenses of such associations shall be made upon such evidence and in such manner and at such time or times as the Secretary of Agriculture may direct, and the accounting therefor by the associations shall be solely administrative and to the Secretary of Agriculture only.

SEC. 220. Any person who knowingly sells, or offers for sale, or knowingly offers to buy, or buys, potatoes not packaged as required by this title, or any person who knowingly sells, or offers for sale, or who knowingly offers to buy, or buys, potatoes to the packages of which are not affixed or attached tax-exemption stamps or tax stamps as required by this title shall, upon conviction thereof, be fined not more than $1,000. Any person convicted of a second offense under the provisions of this title may, in addition to such fine, be imprisoned for not more than one year.

SEC. 221. Any person who, in violation of the regulations made by the Secretary of Agriculture, speculates in tax-exemption stamps, and any person securing tax-exemption stamps from another person by fraud or coercion, shall, upon conviction thereof, be fined not more than $1,000 or sentenced to not more than one year's imprisonment, or both.

SEC. 222. Whenever any potato container, to which are affixed tax stamps or tax-exemption stamps, is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps affixed thereto. Any revenue officer may destroy the tax stamps or tax-exemption stamps affixed to any emptied potato package.

SEC. 223. Any person who willfully violates any provision of this title, or who willfully fails to pay, when due, any tax imposed under this title, or who, with intent to defraud, falsely makes, forges, orders, or counterfeits any tax stamps or tax-exemption stamps made or used under this title or who uses, sells, or has in his possession any such forged, ordered, or counterfeited tax stamps or tax-exemption stamps or any plate or die used, or which may be used in the manufacture thereof, or has in his possession any tax stamp or tax-exemption stamp which should have been destroyed as required by this title, or who makes, uses, sells, or has in his possession, any paper in imitation of the paper or other substance used in the manufacture of any such tax stamp or tax-exemption stamp, or who reuses any tax stamp or tax-exemption stamp required to be destroyed by this title, or who places any potatoes in any package which has been theretofore filled or stamped or otherwise identified under this title without destroying the tax stamps and tax-exemption stamps previously affixed to such package, or who gives away or accepts from another or who sells or buys any emptied package which had been previously filled and stamped or otherwise identified under this title without

destroying the tax stamps and tax-exemption stamps previously affixed or attached to such package, or who makes any false statement in any application for tax-exemption stamps under this title, or who has in his possession any tax-exemption stamps or tax stamps, obtained by him otherwise than as provided in this title, shall, upon conviction, be punished by a fine not exceeding $1,000 or by imprisonment for not exceeding six months, or both.

SEC. 224. Any person who willfully violates any regulation issued or approved pursuant to this title, for the violation of which a special penalty is not provided by law, shall, upon conviction thereof, be punished by a fine not exceeding $200.

SEC. 225. All provisions of law, including penalties, applicable with respect to the taxes imposed by sections 600 and 800 of the Revenue Act of 1926, except section 1121 of the Revenue Act of 1926, and except section 614 of the Revenue Act of 1932, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to all taxes imposed by this title.

SEC. 226. In order to facilitate the making of apportionments and the collection of the taxes imposed by this title, every producer who sells potatoes during any allotment year, or who affects a change in the form of potatoes, shall keep such books and records as the Commissioner, with the joint approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations require and such books and records shall be open to inspection by any authorized agent of the Secretary of Agriculture or the Commissioner.

SEC. 227. Whenever any potatoes, upon the sale of which a tax is required to be paid, are sold, without the use of the proper stamps, or whenever a change in the form of potatoes upon which a tax is required to be paid occurs, without the payment of such tax, it shall be the duty of the Commissioner, within a period of not more than two years after such sale or change in the form, upon satisfactory proof, to estimate the amount of the tax which has been omitted to be paid, and to make the assessment therefor, and certify the same to a collector. The tax so assessed shall be in addition to the penalties imposed by law.

EXPORTS

SEC. 228. Under such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe, the taxes imposed under subsection (a) of section 202 of this title shall not apply in respect to potatoes sold for export to any foreign country or for shipment to a possession or Territory of the United States, and in due course so exported or shipped. Under such rules and regulations the amount of any such tax erroneously or illegally collected in respect to such potatoes so exported or shipped may be refunded to the exporter or shipper of the potatoes instead of the taxpayer if the taxpayer waives any claim for the amount so to be refunded.

IMPORTS

SEC. 229. In order to secure equality between domestic and foreign producers of potatoes and in order to prevent the taxes imposed by subsection (a) of section 202 from resulting in disadvantages to producers of potatoes in the continental United States, the Secretary of Agriculture is hereby authorized and directed to, from time to time by orders and regulations—

(a) For each allotment year or any part thereof that the taxes imposed by subsection (a) of section 202 of this title are in effect, establish quotas for the entry or the importation into the continental United States of potatoes produced in any Territory or possession of the United States, or any foreign country. Such quotas shall be based upon that percentage of the annual average quantity of such potatoes brought or imported into the continental United States during the years 1929–1934, inclusive, which is equal to the percentage that the quantity proclaimed by the Secretary of Agriculture under section 203 of this title is of the annual average of the quantities of potatoes sold in the continental United States during the years 1929–1934, inclusive; and

SEC. 230. After such quotas have been established, potatoes imported or brought into the continental United States in excess of any such quotas shall, in addition to any import duties, be subject to an internal-revenue tax equal to the amount of the tax then in effect on the first sale of potatoes produced and sold in the continental United States. The tax levied by this section shall be represented by tax stamps and shall be paid by the owner or importer prior to release from customs custody and control, or entry into the continental United States.

SEC. 231. During any period the tax imposed by subsection (a) of section 202 is in effect all potatoes imported or brought into the continental United States from any possession or Territory of the United States or from any foreign country shall, prior to release from customs custody and control, in accordance with such rules and regulations as the Commissioner, with the approval of the Secretary of the Treasury, shall prescribe as necessary or desirable to facilitate the collection of the taxes levied by this title, be packed in closed and marked containers. The time and method of such packaging and the time and method of attaching or affixing the stamps required by the preceding section shall be established in accordance with such regulations as the Commissioner shall prescribe. All sales of such potatoes, after release thereof from customs custody and control or entry in the continental United States, shall be in packages in the same manner and under the same terms and conditions as required for the sales of potatoes harvested and sold in the continental United States.

SEC. 232. The provisions of sections 229 and 230 shall not be applicable to potatoes produced in the Republic of Cuba and imported and entered for consumption into the continental United States during the period from December 1 to the last day of the following February, inclusive, in any years: *Provided*, That if the Secretary of Agriculture at any time finds that the importation of potatoes from the Republic of Cuba during such period is, or threatens to result in, unduly depressing the potato market in or for any potato-producing area of the continental United States, he shall proclaim such findings and the provisions of sections 229 and 230 shall be applicable to all potatoes thereafter imported into the continental United States from the Republic of Cuba.

SEC. 233. This title may be cited as the "Potato Act of 1935."

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Form M-76

UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

MARKETING AGREEMENT SERIES—AGREEMENT No. 39
LICENSE SERIES—LICENSE No. 11

AMENDMENT TO MARKETING AGREEMENT AND AMENDED LICENSE FOR SOUTHERN RICE MILLING INDUSTRY

Amendment to marketing agreement approved and executed by the Secretary of Agriculture July 20, 1934. Effective 12:01 a.m. eastern standard time, July 21, 1934

Amendment to amended license issued by the Secretary of Agriculture July 20, 1934. Effective 12:01 a.m. eastern standard time July 21, 1934

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CONTENTS

	Page
Amendment to Marketing Agreement:	
Marketing Agreement	1
Article I. Purposes	2
II. Definitions	2
III. Minimum Prices for rough rice	3
IV. Method of determining minimum sale prices for clean rice	4
V. Terms of sale	5
VI. Brokerage	6
VII. Marketing Fund	6
VIII. Crop control	7
IX. Reports	8
X. Expenses	9
XI. Millers Advisory Council	10
XII. Millers Committee	10
XIII. Producers Committee and Millers Committee	12
XIV. Producers Committee	13
XV. Miscellaneous	14
XVI. Licensing	15
XVII. Effective time	15
XVIII. Duration of immunities	16
XIX. Counterparts	16
XX. Additional parties	16
XXI. Agents	16
XXII. Amendments	16
XXIII. Signatures of parties	16
Schedule 1:	
Premiums	19
Discounts	19
Table A. Total Damaged Kernels	19
B. Heat Damaged Kernels	20
C–1. Red Rice (Long grains)	20
C–2. Red Rice (Medium grains and Japan)	21
D. Cereal Grains	21
E. Rice of other classes	22
F–1. Milling quality (Head Rice) (Honduras)	22
F–2. Milling quality (Head Rice) (Fortuna, Carolina, No. 2702)	23
F–3. Milling quality (Head Rice) (Edith)	23
F–4. Milling quality (Head Rice) (American Patna)	24
F–5. Milling quality (Head Rice) (Blue Rose and Japan)	24
F–6. Milling quality (Head Rice) (Early Prolific, Shomed, Louisiana Pearl)	25
F–7. Milling quality (Head Rice) (Lady Wright, Early Wright)	25
G–1. Milling quality (Total Yield) (Edith, Shomed, Louisiana Pearl, Japan, Blue Rose)	26
G–2. Milling quality (Total Yield) (Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, No. 2702 [Nira])	26
H. Stain	27
I. Musty Odor	27
J. Moisture	27
K. Weed Seeds (Separable)	27
L. Weed Seeds (Inseparable)	28
M. Chalky Kernels	28
N. Muddy Kernels	28
O. Mud Lumps	29

		Page
Amendment of Amended License:		
Article I.	Purposes	31
II.	Definitions	32
III.	Minimum prices for rough rice	33
IV.	Method of determining minimum sale prices for clean rice	35
V.	Terms of sale	36
VI.	Brokerage	37
VII.	Marketing Fund	37
VIII.	Reports	38
IX.	Expenses	39
X.	Millers Advisory Council	40
XI.	Millers Committee	41
XII.	Producers Committee and Millers Committee	43
XIII.	Producers Committee	44
XIV.	Miscellaneous	45
Schedule 1:		
Premiums		49
Discounts		49
Table A.	Total Damaged Kernels	49
B.	Heat Damaged Kernels	50
C–1.	Red Rice (Long grains)	50
C–2.	Red Rice (Medium grains and Japan)	51
D.	Cereal Grains	51
E.	Rice of other classes	52
F–1.	Milling quality (Head Rice) (Honduras)	52
F–2.	Milling quality (Head Rice) (Fortuna, Carolina, No. 2702)	53
F–3.	Milling quality (Head Rice) (Edith)	53
F–4.	Milling quality (Head Rice) (American Patna)	54
F–5.	Milling quality (Head Rice) (Blue Rose and Japan)	54
F–6.	Milling quality (Head Rice) (Early Prolific, Shomed, Louisiana Pearl)	55
F–7.	Milling quality (Head Rice) (Lady Wright, Early Wright)	55
G–1.	Milling quality (Total Yield) (Edith, Shomed, Louisiana Pearl, Japan, Blue Rose)	56
G–2.	Milling quality (Total Yield) (Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, No. 2702 [Nira])	56
H.	Stain	57
I.	Musty Odor	57
J.	Moisture	57
K.	Weed Seeds (Separable)	57
L.	Weed Seeds (Inseparable)	58
M.	Chalky Kernels	58
N.	Muddy Kernels	58
O.	Mud Lumps	59
Exhibit A		59
B		60
C		62

AMENDMENT TO MARKETING AGREEMENT FOR SOUTHERN RICE MILLING INDUSTRY

The parties to this Amendment of the Marketing Agreement for Southern Rice Milling Industry are the undersigned millers and the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary").

Whereas, it is the declared policy of Congress, as set forth in section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended (hereinafter referred to as the "Act").

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; the base period in the case of all agricultural commodities except tobacco being the pre-war period, August 1909–July 1914, and in the case of tobacco, the base period being the post-war period, August 1919 to July 1929;

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets;

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914;

And

Whereas, the Secretary, pursuant to Section 8 (2) of the Act, executed on March 5, 1934, a Marketing Agreement for Southern Rice Milling Industry (hereinafter referred to as the "Marketing Agreement"), and

Whereas, Article XVIII of the Marketing Agreement provides:

Any amendment to this Agreement shall become effective at the date designated by the Secretary, upon approval of such amendment by the Secretary, provided that such amendment shall have first been approved by Millers who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years.

and

Whereas, it is proposed that the Marketing Agreement be amended so as to read as set forth in this Amendment, which amendment of the Marketing Agreement will tend to correct conditions now obtaining in the production of rice in Louisiana, Arkansas and Texas, and the marketing, distribution and other handling thereof and which will tend to effectuate the declared policy of the Act; and

Whereas, the parties hereto, for such purposes, desire to amend the Marketing Agreement;

Now, therefore, the parties hereto agree as follows:

SECTION 1. That the Marketing Agreement (except the signatures thereto, and the "*Now, therefore*" paragraph immediately preceding the Acting Secretary's signature) be amended to read as follows:

MARKETING AGREEMENT FOR SOUTHERN RICE MILLING INDUSTRY

ARTICLE I—PURPOSES

The parties to this Agreement are the contracting millers and the Secretary of Agriculture of the United States.

Whereas, it is the declared policy of Congress as set forth in section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended—

(*a*) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; the base period in the case of all agricultural commodities except tobacco, being the pre-war period, August 1909-July 1914, and in the case of tobacco, the base period being the postwar period, August 1919-July 1929;

(*b*) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets;

(*c*) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914;

And—

Whereas, pursuant to the Agricultural Adjustment Act, as amended, the parties hereto, for the purpose of correcting conditions now obtaining in the production of rice in Louisiana, Arkansas and Texas and the marketing, distribution and other handling thereof, and to effectuate the declared policy of the Act, desire to enter into a marketing agreement under the provisions of section 8 (2) of the Act;

Now, therefore, the parties hereto agree as follows:

ARTICLE II—DEFINITIONS

SECTION 1. As used in this Agreement—

(1) The term "Secretary" means the Secretary of Agriculture of the United States of America.

(2) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(3) The term "person" means individual, partnership, corporation, association, or any other business unit.

(4) The term "rough rice" means rice from which the hull has not been removed.

(5) The term "clean rice" means rice which has been converted into marketable and edible form.

(6) The term "barrel" means a unit of 162 pounds of rough rice.

(7) The term "bushel" means a unit of 45 pounds of rough rice.

(8) The term "pocket" means a container holding 100 pounds net of clean rice.

(9) The term "packaged rice" means clean rice, packed in any type of container, having a net weight of 5 pounds or less.

(10) The term "sack" or "bag" means every container of unknown, irregular or random weight; "stack" or "lump sum" means without respect to quantity, quality or condition; and "round" means purchasing without respect to grade.

(11) The term "customary point of delivery" means either the place at which the rice is actually produced, the public warehouse nearest the place at which the rice is actually produced, or the shipping point nearest the place at which the rice is actually produced, at the option of the producer.

(12) The term "miller" means any person milling rice grown in Louisiana, Arkansas or Texas; or milling rice in Texas, Tennessee, Arkansas or Louisiana; or exporting rough rice grown in Louisiana, Arkansas or Texas; or marketing such rice milled by himself; or any affiliate or subsidiary milling or marketing rice grown in Louisiana, Arkansas or Texas.

(13) The term "contracting miller" means a miller who becomes a party signatory to this Agreement according to the terms hereof.

(14) The term "importer" means any person within the territorial jurisdiction of the Act who first handles for sale or sells within the territorial jurisdiction of the Act any rice produced without the territorial jurisdiction of the Act, except as to rice imported and under bond for re-exportation.

(15) The term "producer" means any person engaged in Louisiana, Arkansas or Texas, in producing rough rice for sale.

(16) The term "Millers Advisory Council" means the Millers Advisory Council created pursuant to article XI.

(17) The term "Millers Committee" means the Committee created and/or continued pursuant to article XII.

(18) The term "Producers Committee" means the Producers Committee created pursuant to article XIV.

(19) The term "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(20) The term "purchase" includes a contract of purchase and a contract to purchase.

(21) The term "sell" or "sale" includes a contract to sell and a contract of sale.

(22) The term "base price" means a minimum price stated in, or fixed by the Secretary pursuant to, section 2 of article III.

(23) The term "Marketing Fund" means a Marketing Fund referred to, and/or provided for, in article VII.

(24) The term "crop year" means the period from July 1 to June 30, both inclusive.

(25) The term "effective period" means the period from the effective date of this Agreement during which it shall continue in force in accordance with its terms.

(26) The term "books and records" means books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other data.

(27) The term "subsidiary" means any person, of or over whom a contracting miller or an affiliate of a contracting miller has, or several contracting millers collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

(28) The term "affiliate" means any person (and/or any subsidiary thereof) who has, either directly or indirectly, actual or legal control of or over a contracting miller, whether by stock ownership or in any other manner.

ARTICLE III—MINIMUM PRICES FOR ROUGH RICE

SECTION 1. Rough rice shall be purchased and sold in units of barrels or bushels and no contracting miller shall purchase or sell rough rice round or by sack, bag, stack, or lump sum.

SEC. 2. The minimum prices for number one grade prime A milling quality of the following varieties of rough rice shall be, until and except as changed by the Secretary:

Variety:	*Per barrel of 162 pounds*
Early Prolific	$2.75
Japan	2.85
Louisiana Pearl	3.00
Blue Rose	3.15
Lady Wright	3.15
Early Wright	3.15
Edith	3.40
Stormproof	3.40
Fortuna	3.45
No. 2702 (Nira)	3.45
Rexoro	3.50

The Secretary is hereby authorized and empowered to change one or more of said minimum prices at any time and from time to time during the effective period. The Secretary is further authorized and empowered to fix minimum prices for said grade of other varieties of rough rice at any time and from time to time during the effective period. Any minimum price for such grade of any variety of rough rice set forth in this section or fixed by the Secretary pursuant to this section shall be deemed to be the "base price" for such variety.

SEC. 3. The minimum prices for other grades of each variety of rough rice shall be the base price for such variety plus the premiums or minus the discounts set forth in the schedule which is annexed hereto, made a part hereof and marked "Schedule 1". Said schedule, or any part thereof, may at any time and from time to time be changed by the Secretary.

SEC. 4. During the effective period, the net price paid or received by any contracting miller for rough rice shall be not less than, and each contracting miller purchasing or receiving rough rice shall be obligated to pay therefor not less than, the minimum price for the corresponding variety and grade, determined pursuant

to this article and Schedule 1, prevailing at the time of the purchase of such rough rice by or from such miller; *Provided, however*, That payment for rough rice of the crop of 1934 or any later year received by contracting millers on or after July 1, 1934, shall be made as hereinafter provided in article VIII. Such minimum prices are for delivery at customary points of delivery, as defined in article II.

SEC. 5. In the event of a controversy with regard to the proper variety or grade of any rough rice, said rice shall be graded by a Federal or Federal-State Grading Office. Contracting millers shall abide by the certificate of grade and variety issued by such Grading Office and the expense of such sampling and grading shall be adjusted by agreement between the parties to such controversy.

SEC. 6. Nothing in this Agreement and nothing done pursuant to section 7 shall be so construed as to give to any contracting miller who shall have by agreement purchased rough rice as being of a certain variety and grade at a price above the minimum price for such variety and grade the privilege of taking any part of such rough rice which may be of lower grade at a price lower than such agreed price, less the discount applicable to such lower grade of rough rice.

SEC. 7. The Secretary is hereby authorized at any time during the effective period to prescribe that there shall be compulsory grading of rough rice and to name a governmental agency by which such grading shall be done. Thereafter during the effective period, no contracting miller shall accept or purchase any rough rice which is not accompanied by a certificate or certificates as to the grade or grades of such rough rice, issued by the person or persons and as the Secretary shall have prescribed, nor except upon the basis of the grade or grades of such rough rice indicated in such certificate or certificates.

SEC. 8. The Secretary is hereby authorized at anytime during the effective period to prescribe that rough rice shall be weighed by a licensed and/or bonded weigher before it is accepted by a contracting miller and that rough rice shall be purchased by a contracting miller on the basis of the weight certified by such weigher. Thereafter, during the effective period, no contracting miller shall accept delivery of any rough rice which shall not have been weighed by a licensed and/or bonded weigher, as the Secretary shall have prescribed, nor accept or purchase rough rice except on the basis of weight certified by such weigher.

SEC. 9. No contracting miller shall purchase rough rice from any person other than the producer thereof, or such producer's successor in interest by operation of law, except upon evidence submitted by the seller satisfactory to the Millers Committee that (1) such producer or such successor has received therefor not less than the minimum price prevailing at the time it was sold by such producer or such successor, and (2) if received by the miller on or after July 1, 1934, such producer or such successor and the Secretary have received payments therefor as hereinafter provided in article VIII.

SEC. 10. Any purchase by, or for the account of, a contracting miller, whether from a person as the seller or at or under any sale to enforce a lien or a judicial sale or otherwise, shall be deemed a purchase by such miller.

ARTICLE IV—METHOD OF DETERMINING MINIMUM SALE PRICES FOR CLEAN RICE

SECTION 1. To effectuate the purposes of this Agreement and to aid in the carrying out and enforcement of the provisions hereof, no contracting miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(*a*) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(*b*) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(*c*) the published carlot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(*d*) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any contracting miller may offer clean rice for sale, for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that

clean rice shall not be offered for sale, sold, or delivered by a contracting miller, apply f.o.b. the miller's mill.

SEC. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (*a*) seventy (70) cents per barrel of rough rice, (*b*) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (*c*) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (*d*) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary is hereby authorized and empowered at any time and from time to time during the effective period, after due notice and opportunity for hearing, to increase or decrease the amount of, and/or change the basis of computation of, the conversion charge.

SEC. 3. The provisions of this article are without prejudice to the right of any miller who asserts that such conversion charge is in excess of or below the conversion charge necessary to accomplish the purposes set forth in section 1 of this article, to a hearing on the question of a change in such conversion charge, in accordance with any applicable General Regulations, Agricultural Adjustment Administration or conducted in such manner as the Secretary may prescribe.

SEC. 4. The provisions of this article shall not be applicable to any sales to any public unemployment relief agency (whether local, State or Federal), to any private unemployment relief agency cooperating with or accredited by any public unemployment relief agency, to any charitable institution or agency, to any hospital in connection with its charitable operations or to any government agency (whether local, State or Federal) when such sales are upon competitive bids; *Provided, however*, That the Millers Committee may from time to time, with the prior approval of the Secretary, prescribe proper safeguards to prevent the reintroduction into the channels of trade of rice so sold.

SEC. 5. No contracting miller, or its officers, employees or agents shall employ any method or device whereby clean rice is sold or offered for sale or delivered for less than any amounts applicable thereto pursuant to this article, whether by discount, rebate, redeemable certificate, stamps and/or books, free services or merchandise, credit for returns, loans or credit outside the usual course of business, or combining prices for rice together with another commodity sold, or by subsidy given for business or assistance in procuring business, or otherwise.

ARTICLE V—TERMS OF SALE

SECTION 1. No contracting miller shall sell rice except on the following terms:

(*a*) All clean rice, other than packaged rice, for delivery in the Continental United States by rail or water, as follows: sight draft, order notify, bill of lading attached, payable on arrival, with one (1) percent discount allowed from f.o.b. mill price for payment within ten (10) days from date of shipment, regardless of whether the goods have arrived or not, and only net amount of invoice and draft to be accepted thereafter, provided, however, that on all sales of rice stored in warehouses located outside the states of Louisiana, Texas, Arkansas, and Tennessee, the terms of sale shall be cash less 1 percent discount for payment in ten (10) days after delivery to the purchaser.

(*b*) All truck deliveries, as follows: Cash less 1 percent within ten (10) days of delivery to carrier.

(*c*) Byproducts, as follows: Sight draft, order notify, bill of lading attached, net cash payable on arrival.

(*d*) Shipments to Puerto Rico, as follows: Net cash with draft drawn dated same as bill of lading, with bill of lading and marine insurance certificate attached, seller's order, notify buyer, and draft to be paid promptly upon arrival and examination of goods, but, not to exceed five full business days after goods have been discharged from ship; except, however, that when sale is to a buyer resident in Continental United States, terms shall be net cash, draft with bill of lading attached, payable on arrival and examination of goods at American destination (port of shipment), or cash less 1 percent if paid within ten (10) days from date of shipment.

(*e*) On all sales for direct shipment to foreign countries, the terms shall be net f.a.s. or net c.i.f. at the option of the seller; provided, however, that on all sales for direct shipment to Canada or Mexico which move all rail the terms of sale shall be net f.o.b. seller's mill.

SEC. 2. All sales and deliveries of clean or rough rice shall be pursuant to written contract which is firm as to all parties thereto.

SEC. 3. No firm contract for the sale or delivery of rough or clean rice shall be cancelled except upon the prior approval of the Millers Committee or its agent.

SEC. 4. Contracting millers (except a cooperative association within the meaning of section 7 of article XV) shall pay cash at time of delivery for all rice purchased by them during the effective period.

ARTICLE VI—BROKERAGE

SECTION 1. No contracting miller shall pay a brokerage charge unless a brokerage service has in fact been rendered and no contracting miller shall pay more than one brokerage charge on any transaction.

SEC. 2. No contracting miller shall pay any brokerage charge in excess of the following schedule:

(*a*) On clean rice and rice flour, except packaged rice, sold within the boundaries of the Continental United States, 8 cents per 100 pounds.

(*b*) On brewers rice and screenings, 5 cents per 100 pounds.

(*c*) On rice bran and rice polish and other rice byproducts, 50 cents per ton, and on rice hulls, 25 cents per ton.

(*d*) On all rice sold in Puerto Rico, 8 cents per 100 pounds.

(*e*) On all sales made for direct shipments to foreign countries through a broker resident outside of the Continental United States 2% of the c.i.f. sales price; on sales for direct shipment to foreign countries through brokers resident in the Continental United States 2% of the c.i.f. sales price, plus 5¢ per 100 lbs.

SEC. 3. No contracting miller shall pay any brokerage charge on the resale of rejected rice when such resale is made by the same broker.

ARTICLE VII—MARKETING FUND

SECTION 1. (*a*) Each contracting miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee a Marketing Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however*, That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive the amount of the Marketing Assessment as to all or any part of the rice milled during any crop year.

(*b*) Any Marketing Assessment payable by a contracting miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any contracting miller fails to pay any such Marketing Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such contracting miller to the Millers Committee an additional amount, equal to the prevailing Marketing Assessment, for each barrel of rough rice milled by him in respect of which the Marketing Assessment has not been paid.

(*d*) The payments made to the Millers Committee pursuant to this section shall constitute the "Marketing Fund No. 2".

SEC. 2. Marketing Fund No. 2 shall be deposited in banks to be selected by the Millers Committee from a list proposed by the Millers Advisory Council and may be invested by the Millers Committee in only securities of the United States of America.

SEC. 3. It is the intention of the parties hereto that Marketing Fund No. 2 shall be used to increase the consumption of American grown rice and to create new markets through research, educational work, demonstrations, advertising and such other means and mediums as the Millers Committee and the Secretary may approve, and to make advances to the Secretary pursuant to section 6 of article VIII hereof. Marketing Fund No. 2 shall be expended only in accordance with such budget or budgets as may from time to time be approved by the Millers Committee and the Secretary.

SEC. 4. (*a*) When the first members of the Millers Committee have been selected by the Millers Advisory Council and have organized, the unexpended balance of the Marketing Fund or Marketing Funds, accumulated pursuant to article VII of the Marketing Agreement for Southern Rice Milling Industry dated October 13, 1933, and/or this Agreement prior to its amendment, in the hands of the Control Committee as constituted under such Marketing Agreements, shall be paid, delivered, and turned over by the members of said Control Committee to the first members of the Millers Committee selected by the Millers Advisory Council, it being the intention of the parties hereto that such unexpended balance

(herein referred to as "Marketing Fund No. 1") may be used by the Millers Committee for expenses incurred by the Millers Committee and/or by any other committees hereunder prior to September 1, 1934 and the surplus shall be used by the Millers Committee, subject to disapproval by the Secretary, to increase consumption of American grown rice, to create new markets, to maintain reasonable domestic prices by financing the export of rice and to make advances to the Secretary pursuant to section 6 of article VIII hereof, and that the Millers Committee shall be deemed to be the successor of the Control Committee.

(*b*) Marketing Fund No. 1 may be deposited in such banks as the Millers Committee or its predecessor may have selected or as the Millers Committee shall hereafter select and/or may be invested or left invested by the Millers Committee in only securities of the United States of America.

ARTICLE VIII—CROP CONTROL

To control the production of rough rice in the states of Louisiana, Arkansas and Texas, the Secretary shall institute an annual crop control program in the following manner:

SECTION 1. *Trust fund.*—To provide funds to be paid to producers who cooperate in any such crop control program, the contracting millers agree to establish a trust fund in the following manner:

(*a*) Commencing July 1, 1934, each contracting miller, upon making payment for any rough rice (of the crop of 1934 or any later year) purchased, shall make (1) a payment to the owner thereof, and (2) a payment to the Secretary. Anything hereinabove to the contrary notwithstanding the amounts of these payments shall be such that the payment to the owner equals sixty (60) percent, and the payment to the Secretary forty (40) percent, of the sum of the two payments, but in no event shall such sum be less than the minimum price payable pursuant to article III and Schedule 1 hereof. Payments made pursuant hereto shall relieve any miller from any further liability under this article to the Secretary or the owner of the rough rice.

(*b*) All payments to the Secretary shall be made to the order of "United States Department of Agriculture", at such time and in such manner as the Secretary may from time to time direct, and shall be held as a trust fund for the purposes and uses herein set forth.

(*c*) The ratio herein fixed between the payment to owners of rough rice and the payment to the Secretary shall apply on all rough rice (of the crop of 1934 or any later year) received during the crop year beginning July 1, 1934, and during each subsequent crop year, unless changed by the Secretary by notice to each miller before July 1 of any year.

SEC. 2. *Allotments to producers.*—(*a*) The Secretary shall determine the total quantity of rice which should be produced in said states, and each of them, during any crop year.

(*b*) The producers in each of said states shall be invited to submit applications for acreage allotments and production quotas, stating for each of such base years as the Secretary may designate (1) the acreage on which rice was planted by the producer, and (2) the quantity of rough rice produced on such acreage. Such applications shall be made upon such forms and at such times as the Secretary may prescribe, and may be verified and corrected by the Secretary.

(*c*) The Secretary shall determine the average annual production of rice during said base years, and shall compute the percentage which the quantity of rice which should be produced in said year (determined by the Secretary pursuant to paragraph (*a*) of this section) bears to such average annual production. The Secretary shall then fix acreage allotments and production quotas by applying such percentage to the average annual acreage and the average annual production, respectively, of each producer during the base period, as disclosed by his application, and shall advise each producer of his allotment. Individual applications, the recitals of which are not supported in the manner prescribed by the Secretary, may be adjusted by the Secretary before the assignment of acreage allotments and production quotas to conform to official data of the Department of Agriculture.

SEC. 3. *Payments to producers.*—Each producer who limits the acreage planted by him in said year to the allotment so assigned to him, such limitation to be confirmed by the Secretary as he may determine, shall receive from the trust fund by the end of the crop year, payments aggregating a sum not exceeding the total sum paid to the Secretary during said crop year, pursuant to section 1 of this article, on rough rice purchased from said producer within his production quota, less his

proportionate share of the expenses incurred pursuant to this article which shall be paid by the Secretary out of the trust fund.

SEC. 4. *Committees.*—To assist in the administration of any such production control program, the Secretary may authorize the formation of committees to verify applications, compute production quotas and acreage allotments, check acreage seeded by producers, and to perform such other functions as the Secretary may designate, subject to and in the manner prescribed by the rules and regulations of the Secretary.

SEC. 5. *Rules and regulations.*—The Secretary may for any purpose necessary to the proper effectuation of any such crop control program, prescribe forms to be executed by producers, which may be in the form of contracts or otherwise, and rules and regulations, not inconsistent herewith, with regard to allotments, quotas and payments, and the right of any producer to such payments shall be subject to such rules and regulations.

SEC. 6. *Advances and surplus funds.*—If funds are required for expenses in initiating any such crop control program before sufficient payments have been made into the trust fund, the Control Committee or the Millers Committee shall advance such required funds to the Secretary out of either or both of the Marketing Funds referred to in sections 3 and 4 of article VII hereof. Such advances shall be repaid to the Millers Committee by the Secretary from the trust fund before payment therefrom of any benefit payments to producers. Any moneys remaining in the trust fund at the end of any crop year, after all proper payments to producers have been made and all expenses paid, shall be used and/or distributed as the Secretary shall determine to effectuate the purpose of the Act.

SEC. 7. For the purposes of this article, rough rice shall be deemed to be of the 1934 crop, or of the crop of any later crop year during which it is received by the miller, unless otherwise certified in accordance with regulations and/or administrative orders heretofore or hereafter issued and/or made by the Secretary.

ARTICLE IX—REPORTS

SECTION 1. *To the Secretary.*—(*a*) The contracting millers shall severally, from time to time, upon the request of the Secretary, furnish him information, on and in accordance with forms of reports to be supplied by him, for the purpose of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this Agreement, and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Agreement are being effectuated, such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports and the information called for thereby shall be final and conclusive.

(*b*) The contracting millers also severally agree that, for the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all their books and records, and the books and records of their affiliates and subsidiaries, shall during the usual hours of business be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

(*c*) The contracting millers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof.

(*d*) All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

SEC. 2. *To the Millers Committee.*—(*a*) To enable the Millers Committee to perform its duties hereunder and to effectuate the purpose of this Agreement each contracting miller shall promptly furnish in such form and substantiated in such manner as the Millers Committee may from time to time prescribe, information requested by the Millers Committee. The Secretary may at any time disapprove any request for information or any forms prescribed pursuant hereto.

(*b*) The details of such reports shall be confidential and the Millers Committee shall not disclose to any person other than the Secretary detailed information concerning the business of any individual miller. It shall be the duty of the Millers Committee to furnish to the Secretary upon request any and all information furnished by the millers to the Millers Committee.

(*c*) The Millers Committee shall, if and so far as practical and consistent with the proper administration and enforcement of this Agreement and of any license supplementary hereto issued pursuant to section 8 (3) of the Act, provide

for the receipt by a confidential employee of the Millers Committee of all reports and information received from millers pursuant hereto and/or any such license and for disclosing the same only in summarized form to the Millers Committee, its members or others (except the Secretary).

SEC. 3. *To Producers.*—In order to enable the producers to support applications for acreage allotments and production quotas pursuant to article VIII hereof, the contracting millers shall give to any producer upon request and without charge all available information with regard to the quantities of rough rice purchased from such producer in past years and such other information as may be necessary or desirable to the proper effectuation of article VIII.

ARTICLE X—EXPENSES

SECTION 1. To carry out the provisions of this Agreement (except those of article VII hereof) and of any license supplementary hereto, issued pursuant to section 8 (3) of the Act, the Millers Committee is authorized and directed:

(*a*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses for the foregoing purposes;

(*b*) Upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 2. (*a*) Each contracting miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee an Administrative Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however*, That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive for any period the amount of the Administrative Assessment as to all or any part of the rice milled during any crop year; *Provided, further however*, That if, on the basis of any budget so approved, the Secretary shall be of the opinion that the current Administrative Assessment is too high or too low, he may decrease it or increase it to not more than 5 cents per barrel for the period covered by such budget, or any part of such period.

(*b*) Any Administrative Assessment payable by a contracting miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any contracting miller fails to pay any such Administrative Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such contracting miller to the Millers Committee an additional amount, equivalent to the prevailing Administrative Assessment, for each barrel of rough rice milled by him in respect of which the Administrative Assessment has not been paid.

SEC. 3. The Millers Committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor pursuant to the foregoing sections of this article. Unless otherwise provided in the notice of termination executed by the Secretary, the foregoing power shall continue after the termination of this Agreement, with respect to any funds which need to be raised and which are unpaid at the time of such termination. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds.

SEC. 4. Any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive, under this article, upon August 1 of 1935 or any subsequent year over and above any amount necessary to meet outstanding obligations, shall on or before December 15 of such year be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to any license which may be issued supplementary to this Agreement, pursuant to section 8 (3) of the Act; *Provided, however*, That any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive under this article or any such license, upon the termination of both this Agreement and any such license, over and above any amount necessary to meet outstanding obligations, shall at such time be returned to the millers pro rata in

proportion to their contributions made pursuant to this article, and/or pursuant to any such license.

ARTICLE XI—MILLERS ADVISORY COUNCIL

SEC. 1. A Millers Advisory Council shall be established consisting of members who shall be selected in accordance with the provisions of this article and who shall serve until they are removed or resign. The initial members shall be selected within ten days after notice from the Rice Section. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 2. One member, and each of his successors, shall be selected by each miller who is signatory to this Agreement and/or is licensed by any license supplementary hereto issued pursuant to section 8 (3) of the Act, by filing with the Secretary an instrument duly executed by such miller designating the individual whom he has selected. A member, or his successor, may be removed by the miller which designated him. Such removal shall become effective upon the filing with the Secretary of an instrument duly executed by such miller or upon a date specified in any such instrument, whichever is later.

SEC. 3. Each miller selecting a member of the Millers Advisory Council may, in the same manner, at any time, select an alternate, to act in the place and stead of such member (a) in his absence, and/or (b) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

SEC. 4. Any question as to whom a miller has selected as a member or alternate shall be submitted to the Rice Section, and its decision shall be final and conclusive.

SEC. 5. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 6. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 7. The Rice Section shall call an organization meeting of the Millers Advisory Council at such time and place as the Rice Section may designate.

SEC. 8. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this agreement.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the Millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 9. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

ARTICLE XII—MILLERS COMMITTEE

SECTION 1. The name of the Control Committee as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or this Agreement prior to its amendment is hereby changed to the "Millers Committee".

SEC. 2. The present members of said Millers Committee shall continue in office until the selection of their successors whereupon they shall cease to hold office.

SEC. 3. The Millers Committee shall consist of seven members who, except as provided in section 2, shall be selected in accordance with the provisions of this article and shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected. The initial members hereafter selected shall be selected at the initial meeting of the Millers Advisory Council and their respective successors (other than those selected to fill vacancies) shall be selected annually thereafter at least thirty days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 4. From a list of nominees submitted by members of the Millers Advisory Council, all seven members (and each of their successors) of the Millers Committee shall be selected in the following manner: Each member (not disqualified) of the Millers Advisory Council shall be entitled to a vote equal to seven times the weight which the volume of rough rice milled or exported by the miller who selected him during the three preceding crop years bears to the total volume of rough rice milled or exported by all millers during said years. The vote of any member of the Millers Advisory Council may be cast for one nominee or distributed among two or more nominees as such member shall prefer. The seven nominees receiving the largest number of votes shall be the members of the Millers Committee.

SEC. 5. Upon the selection (other than to fill a vacancy) of any members of the Millers Committee, the secretary of the Millers Advisory Council shall certify to the Secretary, the name and address of each such member, and the date or dates of their selection. The members so certified to the Secretary shall be deemed for all purposes to be the duly selected members of the Millers Committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 6. To fill any vacancy occasioned by the removal, resignation, demise or disqualification of any member of the Millers Committee, a successor for his unexpired term shall be selected by the Secretary of Agriculture.

SEC. 7. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however*, That:

(*a*) This provision shall not affect or supersede any other provision in this Agreement requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) The Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 8. The members of the Millers Committee or of any other committee created hereunder (including successors, alternates or persons selected by the Secretary), and any agent or employee appointed or employed by the Millers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 9. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 10. The powers and duties of the Millers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To supervise the performance of this Agreement and to act as an intermediary between the Secretary and the millers.

(*c*) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(*d*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*e*) To investigate suspected violations of this Agreement, and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which do not concern the interests of producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII, (entitled "Producers Committee and Millers Committee").

(*g*) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(*h*) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(*i*) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

SEC. 11. The contracting millers agree to abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XIII and if such appeal is taken to abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, provided, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 12. The members of said Control Committee are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

SEC. 13. It being difficult to ascertain the amount of damage which will be sustained by the parties signatory hereto by reason of the violation of any of the terms hereof by any one of the contracting millers, it is agreed

(*a*) That for each violation of any of the terms of this Agreement pertaining to the sale of clean rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent $1.00 upon each pocket of rice involved in the offending transaction, and

(*b*) That for each violation of any of the terms of this Agreement pertaining to the purchase or sale of rough rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent 50 cents upon each barrel of rough rice involved in the offending transaction.

(*c*) Any and all payments pursuant to subsection 13 (*a*) shall become part of Marketing Fund No. 2.

(*d*) Any and all payments pursuant to subsection 13 (*b*) shall be used to pay to any producer involved in such transaction any amount by which the purchase price was below the applicable minimum price, and any excess shall become part of Marketing Fund No. 2.

ARTICLE XIII.—PRODUCERS COMMITTEE AND MILLERS COMMITTEE

SECTION 1. The Producers Committee and the Millers Committee, acting jointly by majority vote of each committee, shall, after due notice and opportunity for hearing, decide all questions, disputes, and complaints which concern the interests of both producers and millers and which arise in connection with the performance of this Agreement.

SEC. 2. If a member of either the Producers Committee or the Millers Committee shall be an interested party to any complaint or dispute (before it acting alone or jointly with the other committee) or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of his committee. Such disqualification, however, shall not be deemed to create a vacancy in his committee within the prohibition of subdivision (*b*) of section 7 of article XII or of section 3 of article XIV.

SEC. 3. An appeal in writing may be taken to the Secretary, in accordance with such applicable regulations or administrative orders as he may approve,

from any decision of either Committee, or of the two Committees acting jointly, by any person aggrieved thereby, within ten days after the decision is announced. Such writing shall be addressed to and filed with the Secretary and a copy thereof shall be forwarded to the committee or committees from whose decision the appeal is taken.

SEC. 4. Pending the decision of any such appeal by the Secretary the parties involved shall abide by the decision of the Producers Committee and/or the Millers Committee, as the case may be, unless the Secretary shall rule otherwise.

SEC. 5. In the event of an appeal, it shall be the duty of the Committee or Committees which rendered the decision from which the appeal is taken to forward to the Secretary the complete record with regard to the subject matter of such appeal.

SEC. 6. In the event that the Producers Committee and the Millers Committee do not agree as to whether a particular question, dispute or complaint or as to whether a particular type of question, dispute or complaint, arising or which might arise in connection with the performance of this Agreement is within the joint jurisdiction of the Producers Committee and the Millers Committee or is within the exclusive jurisdiction of the Producers Committee or is within the exclusive jurisdiction of the Millers Committee, the matter shall be referred for decision to the Secretary, together with such pertinent records as are available and such briefs concerning the matter as either Committee shall deem advisable, which must be filed with him within such time as he shall deem reasonable; and any decision by the Secretary with respect thereto shall be final and conclusive.

ARTICLE XIV—PRODUCERS COMMITTEE

SECTION 1. A Producers Committee shall be established consisting of seven members who and whose successors (and whose alternates, if any) shall be selected by the Secretary and who shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected.

SEC. 2. Eacn alternate, if any, shall act in the place and stead of the member for whom he is selected to act as alternate (a) in his absence, and/or (b) in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however*, That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. The members of the Producers Committee or of any other committee created hereunder (including successors or alternates), and any agent or employee appointed or employed by the Producers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Agreement, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

ARTICLE XV.—MISCELLANEOUS

SECTION 1. The members of any committee or council, and any employees thereof, shall not be held responsible individually in any way whatsoever to any miller, producer, or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member or employee, except for acts of dishonesty. The liability of the contracting millers hereunder is several and not joint and no contracting miller shall be liable for the default of any other contracting miller.

SEC. 2. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (*a*) to exercise any powers granted by the Act or otherwise and/or (*b*) in accordance with such powers, to act in the premises whenever he shall deem it advisable.

SEC. 3. If any provision of this Agreement is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Agreement and/or the applicability of any provision of this Agreement to any other person, circumstance or thing shall not be affected thereby.

SEC. 4. Any change in a minimum price, conversion charge, premium, or discount and any change in Schedule 1 by the Secretary without the formal approval of contracting millers as provided in article XXII shall be deemed to be upon sufficient notice and any notice provided for herein shall be deemed to be sufficient if notice thereof is given similar to that required by regulations of the Agricultural Adjustment Administration in effect at the time for the amendment of licenses issued pursuant to section 8 (3) of the Act; provided, however, that this section shall not be construed as requiring any such notice.

SEC. 5. The provisions of this Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the contracting millers. In any transaction by which a contracting miller may divest himself in whole or in part of his business or facilities, the contracting miller as a condition of such transfer shall cause the vendee or assignee to become a party to this Agreement. No contracting miller shall be relieved of any obligation hereunder by reason of any transfer.

SEC. 6. Any contract or agreement entered into by any contracting miller prior to or during the effective period of this Agreement, for the sale or other disposition of rice or for the purchase or other acquisition of rice or in respect of rice shall be deemed to be superseded by the terms and provisions of this Agreement and by any minimum price, conversion charge, premium or discount established pursuant to this Agreement and by any action, decision or determination of the Millers Committee and/or the Secretary in accordance with this Agreement, whether established, done or made prior or subsequent to such contract or agreement, insofar as such contract or agreement is inconsistent with any term or provision of this Agreement or with any such minimum price, conversion charge, premium or discount or with any such action, decision or determination; *Provided, however,* That this section 6 shall not apply to any such contract or agreement hereafter made where the miller making the same reports the same to the confidential employee of the Millers Committee provided for in section 2 (*c*) of article IX (or to the Secretary if no such employee is in office) within five days after the same is made, nor shall this section 6 apply to any such contract or agreement heretofore made for the sale of clean rice if it was in accordance with the provisions of this Agreement as they were prior to amendment and if it is so reported within ten days after the effective date of this amendment. Any such report shall include the price, the quantity sold or bought, when delivery was made or is to be made and a sales or purchase number by which such contract or agreement can be identified. No such report to such confidential employee need include the name of the person purchasing from the miller nor

the name of the person selling to the miller, but such miller shall when requested report such names to the Secretary or any duly authorized agent of the Secretary, such names to be treated as confidential. Any report, containing such information, heretofore made to the Control Committee or any agent or agency of the Secretary shall be deemed a compliance with this proviso.

SEC. 7. During the effective period, no contracting miller shall mill rice which has not been purchased by such miller. Within the meaning of this Agreement, rice produced by the members of a cooperative association shall be deemed to have been purchased by such cooperative association, and a cooperative association shall be deemed to mean the Arkansas Rice Growers Cooperative Association and any other bona fide cooperative association of producers which mills, in a mill or mills operated by it, rice received by it from its members, which is obligated to receive and sell its members' rice and which shall have received the prior approval of the Secretary.

SEC. 8. The contracting millers admit that all transactions to be regulated by this Agreement are transactions in interstate and/or foreign commerce or transactions in intrastate commerce which are so inextricably intermingled with such interstate and/or foreign transactions that such interstate and/or foreign transactions cannot be effectively regulated in the manner provided in this Agreement, without regulating such intrastate transactions in the manner provided in this Agreement, and that the contracting millers are engaged in the handling of rice in the current of interstate and/or foreign commerce.

SEC. 9. The contracting millers severally authorize and empower the Secretary to inspect any and all rough rice in their possession or under their control.

ARTICLE XVI—LICENSING

The contracting millers hereby apply for and consent to licensing by the Secretary. Such license shall be in accordance with applicable regulations heretofore and hereafter prescribed by the Secretary and approved by the President of the United States of America and shall be subject to the rights and powers of the Secretary from time to time to modify or amend any license issued pursuant to the foregoing.

ARTICLE XVII—EFFECTIVE TIME

SECTION 1. This Agreement shall become effective at such time as the Secretary may declare above his signature attached hereto, and this Agreement shall continue in force until terminated as follows:

(*a*) The Secretary may at any time terminate this Agreement as to all parties thereto, by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(*b*) The Secretary may at any time terminate this Agreement as to any party signatory thereto, by giving at least one day's notice by depositing the same in the mail and addressed to such party at his last known address.

(*c*) The Secretary shall terminate this Agreement as of August 1 of 1935 or any later year by giving notice in the same manner as provided in paragraph (*a*) above upon the request, prior to March 1, of any such calendar year, of contracting millers who milled or exported during the three completed crop years next preceding any such request seventy-five (75) percent of the total rough rice milled or exported by millers during said three crop years.

(*d*) The Secretary shall terminate this Agreement by giving notice in the same manner as provided in paragraph (*a*) above upon the request of contracting millers who milled or exported during the three completed crop years next preceding any such request, 75% of the total rough rice milled or exported by millers during said three crop years, provided, that upon such termination the provisions of articles III and VIII hereof and provisions supplemental to carrying out said articles shall continue in effect until the end of the current crop year. (Such supplemental provisions to be as specified in the Secretary's notice of termination.)

(*e*) This Agreement shall in any event terminate whenever the provisions of the Act authorizing it cease to be in effect.

SEC. 2. Notwithstanding a termination of this Agreement and provided that the Secretary shall so direct, the numbers of the Millers Committee at the time of such termination shall, under the control of and subject to supervision and approval by the Secretary, as trustees receive all property held or controlled by the Millers Committee at the time of such termination, collect all sums owing to the Millers Committee and liquidate all property held or controlled by the Millers Committee and after paying all outstanding obligations shall distribute equitably in accordance with the provisions of this Agreement to those entitled thereto or

use in accordance with the purposes of this Agreement all remaining funds held by them as such trustees; *Provided, however*, That the Secretary may remove such trustees, or any of them, and appoint their successors or a successor.

Article XVIII—Duration of Immunities

The benefits, privileges, and immunities conferred by virtue of this Agreement shall cease upon its termination, except with respect to acts done prior thereto; and the benefits, privileges and immunities conferred by this Agreement upon any party signatory hereto shall cease upon its termination as to such party except with respect to acts done prior thereto.

Article XIX—Counterparts

This Agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were contained in one original.

Article XX—Additional Parties

After this Agreement first takes effect any miller may become a party to this Agreement, if a counterpart thereof is executed by him and by the Secretary. This Agreement shall take effect as to such new contracting party at such time as the Secretary may declare above his signature attached to such counterpart, and the benefits, privileges, and immunities conferred by this Agreement shall then be effective as to such new contracting party.

Article XXI—Agents

The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or agency in connection with any of the provisions of this Agreement.

Article XXII—Amendments

Any amendment to this Agreement shall become effective at the date designated by the Secretary upon approval of such amendment by the Secretary, provided that such amendment shall have first been approved by Millers who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years.

Article XXIII—Signatures of Parties

In witness whereof, the contracting parties, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals.

Whereas, it is provided by section 8 of the Act as follows:

In order to effectuate the declared policy, the Secretary of Agriculture shall have power—(2) After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity, or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful; *Provided*, That no such agreement shall remain in force after the termination of this Act.

and—

Whereas, due notice and opportunity for hearing to interested parties has been given pursuant to the provisions of the Act, and the regulations issued thereunder; and

Whereas, the Secretary finds (1) that the contracting millers are engaged in the marketing, distribution and other handling of rice and/or products thereof in the current of and in competition with, and so as to burden, obstruct, and affect interstate and foreign commerce; and (2) that the marketing, distribution and other handling of rice and/or products thereof in intrastate commerce is inextricably intermingled with the marketing, distribution and other handling of rice in interstate and foreign commerce; and

Whereas, it appears, after due consideration, that this Agreement will tend to effectuate the policy of Congress declared in section 2 of the Act, as hereinbefore in this Agreement set forth.

SEC. 2. This amendment of the Marketing Agreement shall become effective, as to all parties signatory to the Marketing Agreement, at such time as the Secretary may declare above his signature attached hereto.

SEC. 3. The provisions of the Marketing Agreement except as amended by this Amendment shall continue to be in full force and effect.

SEC. 4. Any and all obligations which shall have arisen prior to the effective date of this Amendment, or which may thereafter arise in connection therewith, by virtue of or pursuant to the Marketing Agreement and any breaches of the Marketing Agreement which may have occurred prior to the effective date of this Amendment, shall be deemed not to be released, waived, affected or terminated by reason of this Amendment, except as expressly provided herein.

SEC. 5. The undersigned millers hereby agree to perform all the terms and conditions of the Marketing Agreement as so amended.

In witness whereof, the undersigned millers, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals.

Adolph Pfeffer Rice Milling Co., by Adolph Pfeffer, manager; American Rice Milling Co., by C. J. Freeland, vice president; Arkansas Rice Growers Cooperative Assn., by R. E. Short, vice president; Arkansas State Rice Milling Co., by Frank A. Godchaux Jr., vice president; Beaumont Rice Mills, by J. E. Broussard, president; El Campo Rice Mills, by J. E. Broussard, president; Farmers Rice Milling Co., Inc., by Carl Himel, manager; Kaplan Rice Mill Inc., by T. P. White, vice president; La. State Rice Milling Co. Inc., by Frank A. Godchaux Jr., vice president; Levy Rice Milling Co. Inc., by Jake Levy; Mermentau Rice Mill Co. Inc., by P. M. Lyons, president; Noble Trotter Rice Milling Co. Inc., by J. H. Trotter, secretary-treasurer; Pritchard Rice Milling Co., by P. F. Pritchard, vice president; Republic Rice Mills Inc., by Guy Landry, secretary-treasurer; Rickert Rice Mills Inc., by Fred W. Rickert, president; Smith Rice Mill Co., by Geo. Smith, president; Steinhagen Rice Milling Co., by E. H. Steinhagen, secretary-treasurer; Texas Rice Milling Co., by R. Hoffpauir, president; Tyrrell Rice Milling Co., by V. C. Clark, secretary-manager; United Rice Milling Products Inc. by E. V. Schafer, president; Walton Rice Mill, Inc. by C. R. Walton, president.

Whereas, it appears after due consideration, that the Marketing Agreement, as amended, will tend to effectuate the policy of Congress set forth in Section 2 of the Agricultural Adjustment Act, as amended; and

Whereas, the Secretary finds that this Amendment has been approved by millers, as defined in the Marketing Agreement, who are

parties signatory to the Marketing Agreement and who milled or exported more than one-half of the total rough rice milled and exported during the last three preceding crop years;

Now, therefore, the Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and not otherwise, does hereby execute this Amendment of the Marketing Agreement for Southern Rice Milling Industry, in duplicate, under his hand and the official seal of the Department of Agriculture, in the City of Washington, District of Columbia, on the 20th day of July, 1934, and pursuant to the provisions hereof, declares this Amendment, and said Marketing Agreement as amended by this Amendment, to be effective on and after 12:01 A.M., eastern standard time, July 21, 1934.

H A Wallace

Secretary of Agriculture.

SCHEDULE 1

Premiums

Premium percentages, as named in this Schedule are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

The price for rough rice on which the estimated yield of HEAD RICE is above the yield named as the minimum requirement for the designation PRIME, shall be a premium for one-half of one percent for each full pound, by which the estimate exceeds the yield required for the designation PRIME. The price for rough rice on which the estimate for TOTAL YIELD is above the yield named as the minimum requirement for the designation "A" shall be a premium of one-half of one percent for each full two pounds by which the estimate exceeds the yield required for the designation "A". When the estimated yield of HEAD RICE is above the requirement for the designation PRIME by one full pound, or more, and the estimate for TOTAL YIELD is above the requirement for the designation "A" by two full pounds, or more, the accumulated premiums shall apply.

Discounts

Discounts, as named in this Schedule, are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

Discounts are to apply for each grade factor in the Standards and when rough rice is graded below No. 1 for two or more grade factors, or lower than No. 1 for one or more grade factors and lower than the highest Special Designation for a grade, or lower than the highest designation for two or more Special Grades, the accumulated discounts shall apply, subject to such exceptions as are hereinafter noted.

Table A.—*Discounts for rough rice*

For the Grade Factor

TOTAL DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from Base price
		Percent
No. 1	2%	0
No. 2	2.1% to 4% inc.	3
No. 3	4.1% to 7% inc.	7
No. 4	7.1% to 10% inc.	10
No. 5	10.1% to 12.5% inc.	15
No. 5	12.6% to 15% inc.	15
No. 6	15.1% to 17.5% inc.	20
No. 6	17.6% to 20% inc.	20

The discount for rough rice containing over 20% of TOTAL DAMAGED KERNELS shall be 20% of the base price, plus one-half of one percent of such price, for each full one percent of TOTAL DAMAGED KERNELS in excess of 20%.

A discount may be claimed for either TOTAL DAMAGED KERNELS or HEAT DAMAGED KERNELS, however, discounts for both factors may not be claimed.

TABLE B.—*Discounts for rough rice*

For the Grade Factor

HEAT-DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	2
No. 2	0.02%	4
No. 3	0.04%	8
No. 4	0.06%	10
No. 5	0.08%	13.5
No. 6	0.1%	17.5

The discount for rough rice containing over 0.1% of HEAT DAMAGED KERNELS shall be 17.5% of the base price, plus:

For such excess:	The additional discount shall be:
From 0.2% to 1% inc.	1% of such base price for each 0.1% of Heat Damaged Kernels.
From 1.1% to 5% inc.	1% of such base price for each 0.5% of Heat Damaged Kernels.
From 5.1% upward	1% of such base price for each 1% of Heat Damaged Kernels.

A discount may not be claimed for HEAT DAMAGED KERNELS and TOTAL DAMAGED KERNELS, or for HEAT DAMAGED KERNELS and MUSTY ODOR, or for HEAT DAMAGED KERNELS and STAIN.

TABLE C–1.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties Edith, Honduras, Fortuna, Carolina, American Patna, and No. 2702 (Nira)[1]

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc.	1
No. 2	1.6% to 2.5% inc.	2
No. 3	2.6% to 3.8% inc.	5
No. 3	3.9% to 5% inc.	7
No. 4	5.1% to 7.5% inc.	9
No. 4	7.6% to 10% inc.	13
No. 5	10.1% to 12.5% inc.	15
No. 5	12.6% to 15% inc.	17
No. 6	15.1% to 17.5% inc.	19
No. 6	17.6% to 20% inc.	25

[1] United States Standards of Grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above varieties, containing over 20% RED RICE shall be 25% of the base price, plus one-half of 1 percent of such price, for each full 1 percent of RED RICE in excess of 20%.

TABLE C–2.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties, Lady Wright, Early Wright, Shomed, Blue Rose, Early Prolific and Japan

United States Grade	Percentage allowed for grade	Discount from base price
		Percent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc.	1
No. 2	1.6% to 2.5% inc.	2
No. 3	2.6% to 3.8% inc.	3
No. 3	3.9% to 5% inc.	5
No. 4	5.1% to 7.5% inc.	6
No. 4	7.6% to 10% inc.	8
No. 5	10.1% to 12.5% inc.	10
No. 5	12.6% to 15% inc.	12
No. 6	15.1% to 17.5% inc.	14
No. 6	17.6% to 20% inc.	18

The discount for rough rice, of the above-named varieties, containing over 20% RED RICE shall be 18% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE D.—*Discounts for rough rice*

For the Grade Factor

CEREAL GRAINS

United States Grade	Percentage allowed for grade	Discount from base price
		Percent
No. 1	Trace	0
No. 2	0.02%	1
No. 3	0.04%	2
No. 4	0.06%	3
No. 5	0.08%	4
No. 6	0.1%	5

The discount for rough rice containing CEREAL GRAINS in excess of 0.1% shall be 5% of the base price, plus one percent of such price for each 0.1% of CEREAL GRAINS in excess of 0.1%.

A discount may be claimed for either CEREAL GRAINS or for RICE OF OTHER CLASSES, however, discounts may not be claimed for both factors.

TABLE E.—*Discounts for rough rice*

For the Grade Factor

RICE OF OTHER CLASSES

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	1%	0
No. 2	2%	2
No. 3	4%	5
No. 4	6%	8
No. 5	10%	12

The discount for rough rice containing RICE OF OTHER CLASSES in excess of 10% shall be 12% of the base price, plus one-half of one percent of such price for each full one percent of RICE OF OTHER CLASSES in excess of 10%.

A discount may be claimed either for RICE OF OTHER CLASSES or CEREAL GRAINS; however discounts may not be claimed for both factors.

TABLE F–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Honduras

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	70 lbs	0
Good	69 lbs	1
Good	68 lbs	2
Good	67 lbs	3
Good	66 lbs	4
Good	65 lbs	5
Medium	62–64 lbs. inc	7
Medium	60–61 lbs. inc	9
Fair	57–59 lbs. inc	11
Fair	55–56 lbs. inc	13
Ordinary	52–54 lbs. inc	15
Ordinary	50–51 lbs. inc	17

The discount for Honduras rough rice, with an estimated yield of HEAD RICE below 50 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 50 pounds.

If Honduras rough rice is subject to discount for MOISTURE, then the discount for HEAD RICE yield may not exceed 20%.

TABLE F–2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Fortuna, Carolina, and No. 2702 (Nira)*

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs	0
Good	74 lbs	5
Good	73 lbs	5
Good	72 lbs	5
Good	71 lbs	5
Good	70 lbs	5
Medium	67–69 lbs. inc	10
Medium	65–66 lbs. inc	10
Fair	62–64 lbs. inc	15
Fair	60–61 lbs. inc	15
Ordinary	57–59 lbs. inc	20
Ordinary	55–56 lbs. inc	20

* United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above named varieties, with an estimated yield of HEAD RICE below 55 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–3.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Edith

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	85 lbs	0
Good	84 lbs	5
Good	83 lbs	5
Good	82 lbs	5
Good	81 lbs	5
Good	80 lbs	5
Medium	77–79 lbs. inc	10
Medium	75–76 lbs. inc	10
Fair	72–74 lbs. inc	15
Fair	70–71 lbs. inc	15
Ordinary	67–69 lbs. inc	20
Ordinary	65–66 lbs. inc	20

The discount for Edith rough rice, with an estimated yield of HEAD RICE below 65 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 65

pounds. If Edith rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–4.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, American Patna

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	75 lbs	0
Good	74 lbs	1
Good	73 lbs	2
Good	72 lbs	3
Good	71 lbs	4
Good	70 lbs	5
Medium	67–69 lbs. inc	7
Medium	65–66 lbs. inc	9
Fair	62–64 lbs. inc	11
Fair	60–61 lbs. inc	13
Ordinary	57–59 lbs. inc	15
Ordinary	55–56 lbs. inc	17

The discount for American Patna rough rice, with an estimated yield of HEAD RICE below 55 pounds, shall be 17% of the base price, plus 1% of such price for each full pound of HEAD RICE below 55 pounds. If American Patna rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F–5.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Blue Rose and Japan

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	95 lbs	0
Good	94 lbs	1
Good	93 lbs	2
Good	92 lbs	3
Good	90–91 lbs. inc	4
Medium	87–89 lbs. inc	6
Medium	85–86 lbs. inc	7
Fair	82–84 lbs. inc	8
Fair	80–81 lbs. inc	9
Ordinary	77–79 lbs. inc	10
Ordinary	75–76 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 75 pounds, shall be 11% of

the base price, plus 1% of such price for each full pound of HEAD RICE below 75 pounds.

If rough rice of the above-named varieties is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–6.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Early Prolific, Shomed, and Louisiana Pearl

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above-named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above-named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–7.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Lady Wright and Early Wright

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Percent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above-named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price, for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above-named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15 %

TABLE G–1.—*Discounts for Rough Rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Edith, Louisiana Pearl, Japan, Shomed, Blue Rose

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	110 lbs	0
B	108 lbs	1.5
C	106 lbs	3
D	104 lbs	4.5
E	102 lbs	6

The discount for rough rice, of the above-named varieties, with an estimated TOTAL YIELD of less than 102 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 102 pounds.

TABLE G–2.—*Discounts for Rough Rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, and No. 2702 (Nira) [1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	108 lbs	0
B	106 lbs	1.5
C	104 lbs	3
D	102 lbs	4.5
E	100 lbs	6

[1] United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice of the above-named varieties, with an estimated TOTAL YIELD of less than 100 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 100 pounds.

TABLE H.—*Discounts for rough rice*

For the Grade Factor

STAIN

The discount for STAINED rough rice shall be 3% of the base price, except that no discount may be claimed for STAINED rough rice if a discount is claimed for the grade factors MOISTURE, or MUDDY KERNELS, or MUD LUMPS, or HEAT DAMAGED KERNELS, or MUSTY ODOR.

TABLE I.—*Discounts for rough rice*

For the Grade Factor

MUSTY ODOR

The discount for MUSTY rough rice shall be 5% of the base price, except that no discount may be claimed for MUSTY rough rice if a discount is claimed for the grade factors MOISTURE or HEAT DAMAGED KERNELS or STAIN.

TABLE J.—*Discounts for rough rice*

For the Grade Factor

MOISTURE

United States Grade (Special Designation)	Per cent allowed for grade	Discount from base price
		Per cent
Normal	14%	0
Damp	14.5%	0
Damp	14.6% to 15% inc	3
Damp	15.1% to 15.5% inc	6
Wet	15.6% to 16% inc	8
Wet	16.1% to 17% inc	12

The discount for rough rice containing MOISTURE in excess of 17% shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of MOISTURE in excess of 17%.

No discount may be claimed for MOISTURE if a discount is claimed for MUSTY ODOR or HEAT DAMAGED KERNELS or STAIN.

TABLE K.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (SEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	0
Seedy	2.0%	1

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Separable) shall be 1% of the base price, plus one-half of one percent of such price for each full one percent of WEED and/or GRASS SEEDS in excess of 2%.

TABLE L.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (INSEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	5
Seedy	2.0%	12

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Inseparable) shall be 12% of the base price plus one percent of such price for each full one-half of one percent of such inseparable seeds in excess of 2%.

TABLE M.—*Discounts for rough rice*

For the Grade Factor

CHALKY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Chalky	1.5%	0
Not Chalky	1.6% to 3% inc	1
Slightly Chalky	3.1% to 4.5% inc	2
Slightly Chalky	4.6% to 6% inc	3
Chalky	6.1% to 9% inc	4
Chalky	9.1% to 12% inc	5

The discount for rough rice containing over 12% CHALKY KERNELS shall be 5% of the base price, plus one-half of one percent of such price for each full one percent of CHALKY KERNELS in excess of 12%.

TABLE N.—*Discounts for rough rice*

For the Grade Factor

MUDDY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	1%	0
Slightly Muddy	2%	3
Muddy	5%	8

The discount for rough rice containing in excess of 5% MUDDY KERNELS shall be 8% of the base price, plus 0.1% of such price for each full one percent of MUDDY KERNELS in excess of 5%.

TABLE O.—*Discounts for rough rice*

For the Grade Factor

MUD LUMPS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Percent
Clear	0.1%	0
Slightly Muddy	0.5%	3
Muddy	2.0%	8

The discount for rough rice containing in excess of 2% MUD LUMPS shall be 8% of the base price, plus 0.1% of such price for each 0.1% of MUD LUMPS in excess of 2%.

AMENDMENT OF AMENDED LICENSE FOR SOUTHERN RICE MILLING INDUSTRY

ARTICLE I

Whereas, it is provided by section 8 of the Agricultural Adjustment Act, approved May 12, 1933, as amended (hereinafter referred to as the "Act"), as follows:

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof * * *

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title;

and

Whereas, The Secretary finds that the marketing, distribution, and other handling of rice and products thereof are entirely in the current of interstate and/or foreign commerce because the said marketing, distribution, and other handling are partly interstate and/or foreign commerce and partly intrastate commerce and so inextricably intermingled that said interstate and/or foreign commerce portion cannot be effectively regulated or licensed without licensing that portion which is intrastate commerce; and

Whereas, the Secretary of Agriculture of the United States of America (hereinafter referred to as the "Secretary of Agriculture"), acting under the provisions of the Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder has on October 13, 1933 issued a License for Southern Rice Milling Industry and has on December 8, 1933 and January 6, 1934 duly amended the same (said License, as amended, being hereinafter referred to as the "License"); and

Whereas, the Secretary of Agriculture has determined to amend the terms and conditions of the License;

Now, therefore, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby licenses each and every miller to engage in the business of marketing, distributing and otherwise handling rice, subject to the following terms and conditions, and hereby amends the terms and conditions of the License (except the recitals thereof, execution thereof and the "*In witness whereof*" paragraph immediately preceding his signature) to read as set forth herein:

ARTICLE II—DEFINITIONS

Section 1. As used in this Amended License—

(1) The term "Secretary" means the Secretary of Agriculture of the United States of America.

(2) The term "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(3) The term "person" means individual, partnership, corporation, association, or any other business unit.

(4) The term "rough rice" means rice from which the hull has not been removed.

(5) The term "clean rice" means rice which has been converted into marketable and edible form.

(6) The term "barrel" means a unit of 162 pounds of rough rice.

(7) The term "bushel" means a unit of 45 pounds of rough rice.

(8) The term "pocket" means a container holding 100 pounds net of clean rice.

(9) The term "packaged rice" means clean rice, packed in any type of container, having a net weight of 5 pounds or less.

(10) The term "sack" or "bag" means every container of unknown, irregular or random weight; "stack" or "lump sum" means without respect to quantity, quality or condition; and "round" means purchasing without respect to grade.

(11) The term "customary point of delivery" means either the place at which the rice is actually produced, the public warehouse nearest the place at which the rice is actually produced, or the shipping point nearest the place at which the rice is actually produced, at the option of the producer.

(12) The term "miller" means any person milling rice grown in Louisiana, Arkansas or Texas; or milling rice in Texas, Tennessee, Arkansas or Louisiana; or exporting rough rice grown in Louisiana, Arkansas or Texas; or marketing such rice milled by himself; or any affiliate or subsidiary milling or marketing rice grown in Louisiana, Arkansas or Texas.

(13) The term "licensee" means a miller as defined above.

(14) The term "importer" means any person within the territorial jurisdiction of the Act who first handles for sale or sells within the territorial jurisdiction of the Act any rice produced without the territorial jurisdiction of the Act, except as to rice imported and under bond for re-exportation.

(15) The term "producer" means any person engaged in Louisiana, Arkansas or Texas, in producing rough rice for sale.

(16) The term "Millers Advisory Council" means the Millers Advisory Council established pursuant to article XI of the Marketing Agreement, a copy of which article is set forth in Exhibit A of this Amended License.

(17) The term "Millers Committee" means the Committee established and/or continued pursuant to article XII of the Marketing Agreement, a copy of which article is set forth in Exhibit B of this Amended License.

(18) The term "Producers Committee" means the Producers Committee established pursuant to article XIV of the Marketing Agreement, a copy of which article is set forth in Exhibit C of this Amended License.

(19) The term "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(20) The term "purchase" includes a contract of purchase and a contract to purchase.

(21) The term "sell" or "sale" includes a contract to sell and a contract of sale.

(22) The term "base price" means a minimum price stated in, or fixed by the Secretary pursuant to section 2 of article III of this Amended License.

(23) The term "Marketing Fund" means a Marketing Fund referred to, and/or provided for, in article VII of the Marketing Agreement and/or referred to in article VII of this Amended License.

(24) The term "crop year" means the period from July 1 to June 30, both inclusive.

(25) The term "effective period" means the period from the effective date of this Amended License during which it shall continue in force.

(26) The term "books and records" means books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other data.

(27) The term "subsidiary" means any person, of or over whom a miller or an affiliate of a miller has, or several millers collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

(28) The term "affiliate" means any person (and/or any subsidiary thereof) who has, either directly or indirectly, actual or legal control of or over a miller, whether by stock ownership or in any other manner.

(29) The term "Marketing Agreement" means the Marketing Agreement for Southern Rice Milling Industry executed by the Secretary on March 5, 1934, and effective on March 6, 1934, as amended by Amendment dated July 20, 1934, effective July 21, 1934.

ARTICLE III—MINIMUM PRICES FOR ROUGH RICE

SECTION 1. Rough rice shall be purchased and sold in units of barrels or bushels and no miller shall purchase or sell rough rice round or by sack, bag, stack or lump sum.

SEC. 2. The minimum prices for number one grade prime A milling quality of the following varieties of rough rice shall be, until and except as changed by the Secretary:

Variety:	*Per barrel of 162 pounds*
Early Prolific	$2.75
Japan	2.85
Louisiana Pearl	3.00
Blue Rose	3.15
Lady Wright	3.15
Early Wright	3.15
Edith	3.40
Stormproof	3.40
Fortuna	3.45
No. 2702 (Nira)	3.45
Rexoro	3.50

The Secretary may change one or more of said minimum prices at any time and from time to time during the effective period. The Secretary may fix minimum prices for said grade of other varieties of

rough rice at any time and from time to time during the effective period. Any minimum price for such grade of any variety of rough rice set forth in this section or fixed by the Secretary pursuant to this section shall be deemed to be the "base price" for such variety.

SEC. 3. The minimum prices for other grades of each variety of rough rice shall be the base price for such variety plus the premiums or minus the discounts set forth in the schedule which is annexed hereto, made a part hereof and marked "Schedule 1." Said schedule, or any part thereof, may at any time and from time to time be changed by the Secretary.

SEC. 4. During the effective period, the net price paid or received by any miller for rough rice shall be not less than, and each miller purchasing or receiving rough rice shall be obligated to pay therefor not less than, the minimum price for the corresponding variety and grade, determined pursuant to this article and Schedule 1, prevailing at the time of the purchase of such rough rice by or from such miller; *Provided, however*, That payment in accordance with the provisions of article VIII of the Marketing Agreement, for rough rice of the crop of 1934 or any later year, received by a miller on or after July 1, 1934, shall be deemed a compliance with this section. Such minimum prices are for delivery at customary points of delivery, as defined in article II.

SEC. 5. In the event of a controversy with regard to the proper variety or grade of any rough rice, said rice shall be graded by a Federal or Federal-State Grading Office. Millers shall abide by the certificate of grade and variety issued by such Grading Office and the expense of such sampling and grading shall be adjusted by agreement between the parties to such controversy.

SEC. 6. Nothing in this Amended License and nothing done pursuant to section 7 shall be so construed as to give to any miller who shall have by agreement purchased rough rice as being of a certain variety and grade at a price above the minimum price for such variety and grade the privilege of taking any part of such rough rice which may be of lower grade at a price lower than such agreed price, less the discount applicable to such lower grade of rough rice.

SEC. 7. The Secretary may at any time during the effective period prescribe that there shall be compulsory grading of rough rice and name a governmental agency by which such grading shall be done. Thereafter during the effective period, no miller shall accept or purchase any rough rice which is not accompanied by a certificate or certificates as to the grade or grades of such rough rice, issued by the person or persons and as the Secretary shall have prescribed, nor except upon the basis of the grade or grades of such rough rice indicated in such certificate or certificates.

SEC. 8. The Secretary may at any time during the effective period prescribe that rough rice shall be weighed by a licensed and/or bonded weigher before it is accepted by a miller and that rough rice shall be purchased by a miller on the basis of the weight certified by such weigher. Thereafter, during the effective period, no miller shall accept delivery of any rough rice which shall not have been weighed by a licensed and/or bonded weigher, as the Secretary shall have prescribed, nor accept or purchase rough rice except on the basis of weight certified by such weigher.

SEC. 9. No miller shall purchase rough rice from any person other than the producer thereof, or such producer's successor in interest by operation of law, except upon evidence submitted by the seller satisfactory to the Millers Committee either (1) that such producer or such successor has received therefor not less than the minimum price prevailing at the time it was sold by such producer or such successor, or (2) that such producer or such successor and the Secretary have received payments in connection therewith in accordance with the provisions of article VIII of the Marketing Agreement.

SEC. 10. Any purchase by, or for the account of, a miller, whether from a person as the seller or at or under any sale to enforce a lien or a judicial sale or otherwise, shall be deemed a purchase by such miller.

ARTICLE IV—METHOD OF DETERMINING MINIMUM SALE PRICES FOR CLEAN RICE

SECTION 1. To effectuate the purposes of this Amended License and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(*a*) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(*b*) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(*c*) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(*d*) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, That any miller may offer clean rice for sale, for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f.o.b. the miller's mill.

SEC. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (*a*) seventy (70) cents per barrel of rough rice, (*b*) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (*c*) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (*d*) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge.

SEC. 3. The provisions of this article are without prejudice to the right of any miller who asserts that such conversion charge is in excess of or below the conversion charge necessary to accomplish the purposes set forth in section 1 of this article, to a hearing on the question of a change in such conversion charge, in accordance with applicable General Regulations, Agricultural Adjustment Administration.

SEC. 4. The provisions of this article shall not be applicable to any sales to any public unemployment relief agency (whether local, State or Federal), to any private unemployment relief agency cooperating with or accredited by any public unemployment relief agency, to any charitable institution or agency, to any hospital in connection with its charitable operations or to any government agency (whether local, State or Federal) when such sales are upon competitive bids; *Provided, however*, That the Millers Committee may from time to time, with the prior approval of the Secretary, prescribe proper safeguards to prevent the reintroduction into the channels of trade of rice so sold.

SEC. 5. No miller, or its officers, employees or agents shall employ any method or device whereby clean rice, is sold or offered for sale or delivered for less than any amounts applicable thereto pursuant to this article, whether by discount, rebate, redeemable certificate, stamps and/or books, free services or merchandise, credit for returns, loans or credit outside the usual course of business, or combining prices for rice together with another commodity sold, or by subsidy given for business or assistance in procuring business or otherwise.

ARTICLE V—TERMS OF SALE

SECTION 1. No miller shall sell rice except on the following terms:

(*a*) All clean rice, other than packaged rice, for delivery in the Continental United States by rail or water, as follows: sight draft, order notify, bill of lading attached, payable on arrival, with one (1) percent discount allowed from f.o.b. mill price for payment within ten (10) days from date of shipment, regardless of whether the goods have arrived or not, and only net amount of invoice and draft to be accepted thereafter, *Provided, however*, That on all sales of rice stored in warehouses located outside the states of Louisiana, Texas, Arkansas, and Tennessee, the terms of sale shall be cash less 1 percent discount for payment in ten (10) days after delivery to the purchaser.

(*b*) All truck deliveries, as follows: Cash less 1 percent within ten (10) days of delivery to carrier.

(*c*) Byproducts, as follows: sight draft, order notify, bill of lading attached, net cash payable on arrival.

(*d*) Shipments to Puerto Rico, as follows: net cash with draft drawn dated same as bill of lading, with bill of lading and marine insurance certificate attached, seller's order, notify buyer, and draft to be paid promptly upon arrival and examination of goods, but, not to exceed five full business days after goods have been discharged from ship; *Except, however*, That when sale is to a buyer resident in Continental United States, terms shall be net cash, draft with bill of lading attached, payable on arrival and examination of goods at American destination (port of shipment), or cash less 1 percent if paid within ten (10) days from date of shipment.

(*e*) On all sales for direct shipment to foreign countries, the terms shall be net f.a.s. or net c.i.f. at the option of the seller; *Provided,*

however, That on all sales for direct shipment to Canada or Mexico which move all rail the terms of sale shall be net f.o.b. seller's mill.

SEC. 2. All sales and deliveries of clean or rough rice shall be pursuant to written contract which is firm as to all parties hereto.

SEC. 3. No firm contract for the sale or delivery of rough or clean rice shall be cancelled except upon the prior approval of the Millers Committee or its agent.

SEC. 4. Millers (except a cooperative association within the meaning of section 5 of article XIV) shall pay cash at time of delivery for all rice purchased by them during the effective period.

ARTICLE VI—BROKERAGE

SECTION 1. No miller shall pay a brokerage charge unless a brokerage service has in fact been rendered and no miller shall pay more than one brokerage charge on any transaction.

SEC. 2. No miller shall pay any brokerage charge in excess of the following schedule:

(*a*) On clean rice and rice flour, except packaged rice, sold within the boundaries of the Continental United States, 8 cents per 100 pounds.

(*b*) On brewers rice and screenings, 5 cents per 100 pounds.

(*c*) On rice bran and rice polish and other rice byproducts, 50 cents per ton, and on rice hulls, 25 cents per ton.

(*d*) On all rice sold in Puerto Rico, 8 cents per 100 pounds.

(*e*) On all sales made for direct shipment to foreign countries through a broker resident outside of the Continental United States 2% of the c.i.f. sales price; on sales for direct shipment to foreign countries through brokers resident in the Continental United States 2% of the c.i.f. sales price, plus 5¢ per 100 pounds.

SEC. 3. No miller shall pay any brokerage charge on the resale of rejected rice when such resale is made by the same broker.

ARTICLE VII—MARKETING FUND

SECTION 1. (*a*) When the first members of the Millers Committee have been selected by the Millers Advisory Council and have organized, the unexpended balance of the Marketing Fund or Marketing Funds, accumulated pursuant to article VII of the Marketing Agreement for Southern Rice Milling Industry dated October 13, 1933, and/or the Marketing Agreement prior to its amendment, and/or the License (either before or after its amendment of December 8, 1933) in the hands of the Control Committee as constituted under such Marketing Agreements and/or such License shall be paid, delivered, and turned over by the members of said Control Committee to the first members of the Millers Committee selected by the Millers Advisory Council, it being intended that such unexpended balance (herein referred to as "Marketing Fund No. 1") may be used by the Millers Committee for expenses incurred by the Millers Committee and/or by any other committees hereunder and/or under the Marketing Agreement prior to September 1, 1934 and the surplus shall be used by the Millers Committee, subject to disapproval by the Secretary, to increase consumption of American grown rice, to create new markets, to maintain reasonable domestic prices by financing

the export of rice and to make advances to the Secretary pursuant to section 6 of article VIII of the Marketing Agreement, and that the Millers Committee shall be deemed to be the successor of the Control Committee.

(*b*) Marketing Fund No. 1 may be deposited in such banks as the Millers Committee or its predecessor may have selected or as the Millers Committee shall hereafter select and/or may be invested or left invested by the Millers Committee in only securities of the United States of America.

ARTICLE VIII—REPORTS

SECTION 1. *To the Secretary.*—(*a*) The millers shall severally, from time to time, upon the request of the Secretary, furnish him information, on and in accordance with forms of reports to be supplied by him, for the purpose of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this Amended License and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Amended License are being effectuated, such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports and the information called for thereby shall be final and conclusive.

(*b*) For the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all the books and records of each miller, and the books and records of the affiliates and subsidiaries of each miller, shall during the usual hours of business be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

(*c*) The millers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof.

(*d*) All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

SEC. 2. *To the Millers Committee.*—(*a*) To enable the Millers Committee to perform its duties hereunder and to effectuate the purpose of this amended License each miller shall promptly furnish in such form and substantiated in such manner as the Millers Committee may from time to time prescribe, information requested by the Millers Committee. The Secretary may at any time disapprove any request for information or any forms prescribed pursuant hereto.

(*b*) The details of such reports shall be confidential and the Millers Committee shall not disclose to any person other than the Secretary detailed information concerning the business of any individual miller. It shall be the duty of the Millers Committee to furnish to the Secretary upon request any and all information furnished by the millers to the Millers Committee.

(*c*) The Millers Committee shall, if and so far as practical and consistent with the proper administration and enforcement of this Amended License, and/or of the Marketing Agreement, provide for the receipt by a confidential employee of the Millers Committee of all

reports and information received from millers pursuant hereto and/or the Marketing Agreement and for disclosing the same only in summarized form to the Millers Committee, its members or others (except the Secretary).

SEC. 3. *To Producers.*—In order to enable the producers to support applications for acreage allotments and production quotas pursuant to article VIII of the Marketing Agreement, the millers shall give to any producer upon request and without charge all available information with regard to the quantities of rough rice purchased from such producer in past years and such other information as may be necessary or desirable to the proper effectuation of article VIII of the Marketing Agreement.

ARTICLE IX—EXPENSES

SECTION 1. To carry out the provisions of this Amended License and of the Marketing Agreement (except those of articles VII and VIII of the Marketing Agreement), the Millers Committee is authorized and directed:

(*a*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses for the foregoing purposes;

(*b*) Upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 2. (*a*) Each miller who during the effective period shall mill rice of any variety or grade, shall contribute and pay to the Millers Committee an Administrative Assessment at the rate of 5 cents for each barrel of rough rice milled by him; *Provided, however,* That the Millers Committee, with the prior approval of the Secretary, may at any time and from time to time reduce or waive for any period the amount of the Administrative Assessment as to all or any part of the rice milled during any crop year; *Provided, further however,* That if, on the basis of any budget so approved, the Secretary shall be of the opinion that the current Administrative Assessment is too high or too low, he may decrease it or increase it to not more than 5 cents per barrel for the period covered by such budget, or any part of such period.

(*b*) Any Administrative Assessment payable by a miller on rice milled by such miller shall become due and payable and be paid on or before the 15th day of the calendar month next succeeding the date on which such rice was milled.

(*c*) If any miller fails to pay any such Administrative Assessment on or before the date on which it is due, there shall immediately become due and payable and be paid by such miller to the Millers Committee an additional amount, equivalent to the prevailing Administrative Assessment, for each barrel of rough rice milled by him in respect of which the Administrative Assessment has not been paid.

SEC. 3. The Millers Committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor pursuant to the fore-

going sections of this article. Unless otherwise provided in the notice of termination executed by the Secretary, the foregoing power shall continue after the termination of this Amended License, with respect to any funds which need to be raised and which are unpaid at the time of such termination. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds.

SEC. 4. Any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive, under this article, upon August 1 of 1935 or any subsequent year over and above any amount necessary to meet outstanding obligations, shall on or before December 15 of such year be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to article X of the Marketing Agreement; *Provided, however*, that any funds (except any in or derived from a Marketing Fund) which the Millers Committee shall have on hand, or be entitled to receive under this article or article X of the Marketing Agreement upon the termination of both this Amended License and the Marketing Agreement, over and above any amount necessary to meet outstanding obligations, shall at such time be returned to the millers pro rata in proportion to their contributions made pursuant to this article, and/or pursuant to article X of the Marketing Agreement.

ARTICLE X—MILLERS ADVISORY COUNCIL

SECTION 1. The members of the Millers Advisory Council, their alternates and successors, as named in instruments filed with the Secretary pursuant to section 2 of article XI of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Millers Advisory Council, subject, however, to the right of any licensee to protest such selection, in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 2. The Millers Advisory Council, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement, the Millers Advisory Council shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License (so far as each is applicable) and, as to other licensees, the Millers Advisory Council shall have only the powers and duties set forth in this Amended License. All acts of the Millers Advisory Council, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to the termination of this Amended License, the Millers Advisory Council shall continue to have the powers and duties set forth in this Amended License, and the members of the Millers Advisory Council,

their alternates and successors, shall continue to be selected by the persons and in the manner provided in article XI of the Marketing Agreement.

SEC. 3. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 4. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 5. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII of the Marketing Agreement, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 6. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

ARTICLE XI—MILLERS COMMITTEE

SECTION 1. The members of the Millers Committee, and their successors, certified from time to time to the Secretary pursuant to section 5 of article XII of the Marketing Agreement, or selected by the Secretary pursuant to section 6 of article XII of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Millers Committee, subject however, to the right of any licensee to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

SEC. 2. The Millers Committee, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement the Millers Committee shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License

(so far as each is applicable) and, as to other licensees, the Millers Committee shall have only the powers and duties set forth in this Amended License. All acts of the Millers Committee, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to the termination of this Amended License, the Millers Committee shall continue to have the powers and duties set forth in this Amended License, and the members of the Millers Committee and their successors shall continue to be selected by the persons and in the manner provided in article XII of the Marketing Agreement.

SEC. 3. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however,* That:

(*a*) this provision shall not affect or supersede any other provision in this Amended License requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) the Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 4. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Millers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To supervise the performance of this Amended License and to act as an intermediary between the Secretary and the millers.

(*c*) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(*d*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*e*) To investigate suspected violations of this Amended License and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Amended License and which do not concern the interests of producers.

(*f*) To act as provided in, and subject to the provisions of, article XII (entitled "Producers Committee and Millers Committee").

(*g*) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(*h*) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(*i*) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement and/or license for importers and/or amendments to the Marketing Agreement and/or this Amended License concerning importers.

SEC. 7. The millers shall abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XII and if such appeal is taken shall abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, *provided*, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 8. The members of the Control Committee, as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or the Marketing Agreement for Southern Rice Milling Industry, dated March 5, 1934, prior to its amendment, are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

ARTICLE XII—PRODUCERS COMMITTEE AND MILLERS COMMITTEE

SECTION 1. The Producers Committee and the Millers Committee, acting jointly by majority vote of each committee, shall, after due notice and opportunity for hearing, decide all questions, disputes, and complaints which concern the interests of both producers and millers and which arise in connection with the performance of this Amended License.

SEC. 2. If a member of either the Producers Committee or the Millers Committee shall be an interested party to any complaint or dispute (before it acting alone or jointly with the other committee) or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of his committee. Such disqualification, however, shall not be deemed to create a vacancy in his committee within the prohibition of subdivision (*b*) of section 3 of article XI or of section 3 of article XIII.

SEC. 3. An appeal in writing may be taken to the Secretary, in accordance with such applicable regulations or administrative orders

as he may approve, from any decision of either Committee, or of the two Committees acting jointly, by any person aggrieved thereby, within ten days after the decision is announced. Such writing shall be addressed to and filed with the Secretary and a copy thereof shall be forwarded to the committee or committees from whose decision the appeal is taken.

SEC. 4. Pending the decision of any such appeal by the Secretary, the parties involved shall abide by the decision of the Producers Committee and/or the Millers Committee, as the case may be, unless the Secretary shall rule otherwise.

SEC. 5. In the event of an appeal, it shall be the duty of the Committee or Committees which rendered the decision from which the appeal is taken to forward to the Secretary the complete record with regard to the subject matter of such appeal.

SEC. 6. In the event that the Producers Committee and the Millers Committee do not agree as to whether a particular question, dispute or complaint or as to whether a particular type of question, dispute or complaint, arising or which might arise in connection with the performance of this Amended License and/or the Marketing Agreement is within the joint jurisdiction of the Producers Committee and the Millers Committee or is within the exclusive jurisdiction of the Producers Committee or is within the exclusive jurisdiction of the Millers Committee, the matter shall be referred for decision to the Secretary, together with such pertinent records as are available and such briefs concerning the matter as either Committee shall deem advisable, which must be filed with him within such time as he shall deem reasonable; and any decision by the Secretary with respect thereto shall be final and conclusive.

ARTICLE XIII—PRODUCERS COMMITTEE

SECTION 1. The members of the Producers Committee, their alternates and successors, as selected from time to time by the Secretary pursuant to section 1 of article XIV of the Marketing Agreement, shall be deemed for all purposes under this Amended License to be the duly selected members of the Producers Committee, subject, however, to the right of any licensee to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

SEC. 2. The Producers Committee, concurrent with, and in addition to its powers and duties under the Marketing Agreement, shall have the powers and duties set forth in this Amended License; *Provided, however*, That as to all licensees who are parties to the Marketing Agreement, the Producers Committee shall have the powers and duties set forth in the Marketing Agreement and/or in this Amended License (so far as each is applicable) and, as to other licensees the Producers Committee shall have only the powers and duties set forth in this Amended License. All acts of the Producers Committee, as to licensees who are parties to the Marketing Agreement, shall be deemed to have been performed pursuant to the provisions of both the Marketing Agreement and of this Amended License (so far as each is applicable) and, as to other licensees, to have been performed pursuant only to the provisions of this Amended License. In the event the Marketing Agreement is terminated prior to termination of this Amended License, the Producers Committee shall continue

to have the powers and duties set forth in this Amended License, and the members of the Producers Committee, their alternates and successors, shall continue to be selected by the person and in the manner provided in article XIV of the Marketing Agreement.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however,* That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. Each and every order, regulation, decision, determination, or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Amended License.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Amended License, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Amended License and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement and/or license for importers and/or amendments to the Marketing Agreement and/or this Amended License concerning importers.

ARTICLE XIV—MISCELLANEOUS

SECTION 1. The members of any committee or council, and any employees thereof, shall not be held responsible individually in any

way whatsoever to any miller, producer, or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member or employee, except for acts of dishonesty.

SEC. 2. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (a) to exercise any powers granted by the act or otherwise and/or (b) in accordance with such powers, to act in the premises whenever he shall deem it advisable.

SEC. 3. If any provision of this Amended License is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Amended License and/or the applicability of any provision of this Amended License to any other person, circumstance or thing shall not be affected thereby.

SEC. 4. Any change in a minimum price, conversion charge, premium, or discount and any change in Schedule 1 by the Secretary shall be deemed to be upon sufficient notice and any notice provided for herein shall be deemed to be sufficient if notice thereof is given similar to that required by regulations of the Agricultural Adjustment Administration in effect at the time for the amendment of licenses issued pursuant to section 8 (3) of the Act; *Provided, however,* That this section shall not be construed as requiring any such notice.

SEC. 5. Any contract or agreement entered into by any miller prior to or during the effective period of this Amended License, for the sale or other disposition of rice or for the purchase or other acquisition of rice or in respect of rice shall be deemed to be superseded by the terms and provisions of this Amended License and by any minimum price, conversion charge, premium, or discount established pursuant to this Amended License and by any action, decision or determination of the Millers Committee and/or the Secretary in accordance with this Amended License, whether established, done or made prior or subsequent to such contract or agreement, insofar as such contract or agreement is inconsistent with any term or provision of this Amended License or with any such minimum price, conversion charge, premium or discount or with any such action, decision or determination; *Provided, however,* That this section 5 shall not apply to any such contract or agreement hereafter made where the miller making the same reports the same to the confidential employee of the Millers Committee provided for in section 2 (*c*) of article VIII (or to the Secretary if no such employee is in office) within five days after the same is made, nor shall this section 5 apply to any such contract or agreement heretofore made for the sale of clean rice if it was in accordance with the provisions of the License as they were prior to this amendment and if it is so reported within ten days after the effective date of this amendment. Any such report shall include the price, the quantity sold or bought, when delivery was made or is to be made and a sales or purchase number by which such contract or agreement can be identified. No such report to such confidential employee need include the name of the person purchasing from the miller nor the name of the person selling to the miller, but such miller shall when requested report such names to the Secretary or any duly authorized agent of the Secretary, such names to be treated as confidential. Any report, containing such information, heretofore made to the Control Committee or any agent or agency of the Secretary shall be deemed a compliance with this proviso.

SEC. 6. During the effective period, each miller shall mill only rice which has been purchased or grown by such miller. Within the meaning of this Amended License, rice produced by the members of a cooperative association shall be deemed to have been purchased by such cooperative association, and a cooperative association shall be deemed to mean the Arkansas Rice Growers Cooperative Association and any other bona fide cooperative association of producers which mills, in a mill or mills operated by it, rice received by it from its members, which is obligated to receive and sell its members' rice and which shall have received the prior approval of the Secretary.

SEC. 7. The Secretary may at any time and from time to time inspect any and all rough rice in the possession or under the control of any miller.

SEC. 8. In the event this Amended License is terminated or amended by the Secretary, any and all obligations which shall have arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this Amended License, and any violations of this Amended License which may have occurred prior to such termination or amendment shall be deemed not to be released, affected, waived, or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to, this Amended License.

SEC. 9. Notwithstanding a termination of this Amended License and provided that the Secretary shall so direct, the members of the Millers Committee at the time of such termination shall, under the control of and subject to supervision and approval by the Secretary, as trustees receive all property held or controlled by the Millers Committee at the time of such termination, collect all sums owing to the Millers Committee and liquidate all property held or controlled by the Millers Committee and after paying all outstanding obligations shall distribute equitably in accordance with the provisions of this Amended License to those entitled thereto or use in accordance with the purposes of this Amended License all remaining funds held by them as such trustees; *Provided, however*, That the Secretary may remove such trustees, or any of them, and appoint their successors or a successor.

SEC. 10. The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any Bureau or Division in the Department of Agriculture, to act as his agent or agency in connection with any of the provisions of this Amended License.

SEC. 11. This Amendment to the License and this Amended License shall take effect as to every miller at the time and upon the date set forth herein above the signature of the Secretary.

SEC. 12. The provisions of the License, except as amended by this Amendment, shall continue to be in full force and effect.

SEC. 13. Any and all obligations which shall have arisen prior to the effective date of this Amendment, or which thereafter arise in connection therewith, by virtue of or pursuant to the License, and any violations of the License which may have occurred prior to the effective date of this Amendment, shall be deemed not to be released, affected, waived or terminated by reason of this Amendment, except as expressly provided herein.

SEC. 14. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days and that the period of notice, with respect to this Amendment to the License and the issuance of this Amended License, which is herein provided, is reasonable under the circumstances.

In witness whereof, H. A. WALLACE, Secretary of Agriculture does hereby execute, in duplicate, this Amendment to the License and does hereby issue this Amended License in the City of Washington, District of Columbia, on this 20th day of July, 1934, and pursuant to the provisions hereof declares this Amendment and this Amended License to be effective on and after 12:01 a.m. eastern standard time, July 21, 1934.

H A Wallace

Secretary of Agriculture.

SCHEDULE 1

PREMIUMS

Premium percentages, as named in this Schedule are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

The price for rough rice on which the estimated yield of HEAD RICE is above the yield named as the minimum requirement for the designation PRIME, shall be a premium of one-half of one percent for each full pound by which the estimate exceeds the yield required for the designation PRIME. The price for rough rice on which the estimate for TOTAL YIELD is above the yield named as the minimum requirement for the designation "A" shall be a premium of one-half of one percent for each full two pounds by which the estimate exceeds the yield required for the designation "A". When the estimated yield of HEAD RICE is above the requirement for the designation PRIME by one full pound, or more, and the estimate for TOTAL YIELD is above the requirement for the designation "A" by two full pounds, or more, the accumulated premiums shall apply.

DISCOUNTS

Discounts, as named in this Schedule, are to be applied to the base price for Prime No. 1 A Milling quality rough rice as such may be named, for the several varieties, by the Secretary.

Discounts are to apply for each grade factor in the Standards and when rough rice is graded below No. 1 for two or more grade factors, or lower than No. 1 for one or more grade factors and lower than the highest Special Designation for a grade, or lower than the highest designation for two or more Special Grades, the accumulated discounts shall apply, subject to such exceptions as are hereinafter noted.

TABLE A.—*Discounts for rough rice*

For the Grade Factor

TOTAL DAMAGED KERNALS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	2%	0
No. 2	2.1% to 4% inc	3
No. 3	4.1% to 7% inc	7
No. 4	7.1% to 10% inc	10
No. 5	10.1% to 12.5% inc	15
No. 5	12.6% to 15% inc	15
No. 6	15.1% to 17.5% inc	20
No. 6	17.6% to 20% inc	20

The discount for rough rice containing over 20% of TOTAL DAMAGED KERNELS shall be 20% of the base price, plus one-half of one percent of such price, for each full one percent of TOTAL DAMAGED KERNELS in excess of 20%.

A discount may be claimed for either TOTAL DAMAGED KERNELS or HEAT DAMAGED KERNELS, however, discounts for both factors may not be claimed.

TABLE B.—*Discounts for rough rice*

For the Grade Factor

HEAT DAMAGED KERNELS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	2
No. 2	0.02%	4
No. 3	0.04%	8
No. 4	0.06%	10.
No. 5	0.08%	13. 5
No. 6	0.1%	17. 5

The discount for rough rice containing over 0.1% of HEAT DAMAGED KERNELS shall be 17.5% of the base price, plus:

For such excess:	The additional discount shall be:
From 0.2% to 1% inc	1% of such base price for each 0.1% of Heat Damaged Kernels.
From 1.1% to 5% inc	1% of such base price for each 0.5% of Heat Damaged Kernels.
From 5.1% upward	1% of such base price for each 1% of Heat Damaged Kernels.

A discount may not be claimed for HEAT DAMAGED KERNELS and TOTAL DAMAGED KERNELS, or for HEAT DAMAGED KERNELS and MUSTY ODOR, or for HEAT DAMAGED KERNELS and STAIN.

TABLE C–1.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties Edith, Honduras, Fortuna, Carolina, American Patna, and No. 2702 (Nira) [1]

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc	1
No. 2	1.6% to 2.5% inc	2
No. 3	2.6% to 3.8% inc	5
No. 3	3.9% to 5% inc	7
No. 4	5.1% to 7.5% inc	9
No. 4	7.6% to 10% inc	13
No. 5	10.1% to 12.5% inc	15
No. 5	12.6% to 15% inc	17
No. 6	15.1% to 17.5% inc	19
No. 6	17.6% to 20% inc	25

[1] United States Standards of Grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice, of the above varieties, containing over 20% RED RICE shall be 25% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE C–2.—*Discounts for rough rice*

For the Grade Factor

RED RICE

For the varieties, Lady Wright, Early Wright, Shomed, Blue Rose, Early Prolific and Japan

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	To 0.5%	0
No. 2	0.6% to 1.5% inc	1
No. 2	1.6% to 2.5% inc	2
No. 3	2.6% to 3.8% inc	3
No. 3	3.9% to 5% inc	5
No. 4	5.1% to 7.5% inc	6
No. 4	7.6% to 10% inc	8
No. 5	10.1% to 12.5% inc	10
No. 5	12.6% to 15% inc	12
No. 6	15.1% to 17.5% inc	14
No. 6	17.6% to 20% inc	18

The discount for rough rice, of the above-named varieties, containing over 20% RED RICE shall be 18% of the base price, plus one-half of one percent of such price, for each full one percent of RED RICE in excess of 20%.

TABLE D.—*Discounts for rough rice*

For the Grade Factor

CEREAL GRAINS

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	Trace	0
No. 2	0.02%	1
No. 3	0.04%	2
No. 4	0.06%	3
No. 5	0.08%	4
No. 6	0.1%	5

The discount for rough rice containing CEREAL GRAINS in excess of 0.1% shall be 5% of the base price, plus one percent of such price for each 0.1% of CEREAL GRAINS in excess of 0.1%.

A discount may be claimed for either CEREAL GRAINS or for RICE OF OTHER CLASSES, however, discounts may not be claimed for both factors.

TABLE E.—*Discounts for rough rice*

For the Grade Factor

RICE OF OTHER CLASSES

United States Grade	Percentage allowed for grade	Discount from base price
		Per cent
No. 1	1%	0
No. 2	2%	2
No. 3	4%	5
No. 4	6%	8
No. 5	10%	12

The discount for rough rice containing RICE OF OTHER CLASSES in excess of 10% shall be 12% of the base price, plus one-half of one percent of such price for each full one percent of RICE OF OTHER CLASSES in excess of 10%.

A discount may be claimed either for RICE OF OTHER CLASSES or CEREAL GRAINS, however, discounts may not be claimed for both factors.

TABLE F–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Honduras

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	70 lbs	0
Good	69 lbs	1
Good	68 lbs	2
Good	67 lbs	3
Good	66 lbs	4
Good	65 lbs	5
Medium	62–64 lbs. inc	7
Medium	60–61 lbs. inc	9
Fair	57–59 lbs. inc	11
Fair	55–56 lbs. inc	13
Ordinary	52–54 lbs. inc	15
Ordinary	50–51 lbs. inc	17

The discount for Honduras rough rice, with an estimated yield of HEAD RICE below 50 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 50 pounds.

If Honduras rough rice is subject to discount for MOISTURE, then the discount for HEAD RICE yield may not exceed 20%.

TABLE F-2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Fortuna, Carolina and No. 2702 (Nira)[1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs.	0
Good	74 lbs.	5
Good	73 lbs.	5
Good	72 lbs.	5
Good	71 lbs.	5
Good	70 lbs.	5
Medium	67–69 lbs. inc.	10
Medium	65–66 lbs. inc.	10
Fair	62–64 lbs. inc.	15
Fair	60–61 lbs. inc.	15
Ordinary	57–59 lbs. inc.	20
Ordinary	55–56 lbs. inc.	20

[1]United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira.)

The discount for rough rice, of the above named varieties, with an estimated yield of HEAD RICE below 55 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-3.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, Edith

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	85 lbs.	0
Good	84 lbs.	5
Good	83 lbs.	5
Good	82 lbs.	5
Good	81 lbs.	5
Good	80 lbs.	5
Medium	77–79 lbs. inc.	10
Medium	75–76 lbs. inc.	10
Fair	72–74 lbs. inc.	15
Fair	70–71 lbs. inc.	15
Ordinary	67–69 lbs. inc.	20
Ordinary	65–66 lbs. inc.	20

The discount for Edith rough rice, with an estimated yield of HEAD RICE below 65 pounds, shall be 20% of the base price, plus one percent of such price for each full pound of HEAD RICE below 65 pounds. If Edith rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-4.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the variety, American Patna

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	75 lbs	0
Good	74 lbs	1
Good	73 lbs	2
Good	72 lbs	3
Good	71 lbs	4
Good	70 lbs	5
Medium	67–69 lbs. inc	7
Medium	65–66 lbs. inc	9
Fair	62–64 lbs. inc	11
Fair	60–61 lbs. inc	13
Ordinary	57–59 lbs. inc	15
Ordinary	55–56 lbs. inc	17

The discount for American Patna rough rice, with an estimated yield of HEAD RICE below 55 pounds, shall be 17% of the base price, plus one percent of such price for each full pound of HEAD RICE below 55 pounds. If American Patna rough rice is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 20%.

TABLE F-5.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Blue Rose and Japan

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	95 lbs	0
Good	94 lbs	1
Good	93 lbs	2
Good	92 lbs	3
Good	90–91 lbs. inc	4
Medium	87–89 lbs. inc	6
Medium	85–86 lbs. inc	7
Fair	82–84 lbs. inc	8
Fair	80–81 lbs. inc	9
Ordinary	77–79 lbs. inc	10
Ordinary	75–76 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 75 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 75 pounds.

If rough rice of the above named varieties is subject to a discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–6.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Early Prolific, Shomed and Louisiana Pearl

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE F–7.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (HEAD RICE)

For the varieties, Lady Wright and Early Wright

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
Prime	90 lbs	0
Good	89 lbs	1
Good	88 lbs	2
Good	87 lbs	3
Good	85–86 lbs. inc	4
Medium	82–84 lbs. inc	7
Medium	80–81 lbs. inc	7
Fair	77–79 lbs. inc	9
Fair	75–76 lbs. inc	9
Ordinary	72–74 lbs. inc	11
Ordinary	70–71 lbs. inc	11

The discount for rough rice of the above named varieties, with an estimated yield of HEAD RICE below 70 pounds, shall be 11% of the base price, plus one percent of such price, for each full pound of HEAD RICE below 70 pounds.

If rough rice of the above named varieties is subject to discount for MOISTURE, then, the discount for HEAD RICE yield may not exceed 15%.

TABLE G–1.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Edith, Louisiana Pearl, Japan, Shomed, Blue Rose

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	110 lbs	0
B	108 lbs	1.5
C	106 lbs	3
D	104 lbs	4.5
E	102 lbs	6

The discount for rough rice, of the above named varieties, with an estimated TOTAL YIELD of less than 102 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 102 pounds.

TABLE G–2.—*Discounts for rough rice*

For the Grade Factor

MILLING QUALITY (TOTAL YIELD)

For the varieties, Honduras, Fortuna, Carolina, Lady Wright, Early Wright, American Patna, Early Prolific, and No. 2702 (Nira) [1]

United States Grade (Special Designation)	Yield required for grade	Discount from base price
		Per cent
A	108 lbs	0
B	106 lbs	1.5
C	104 lbs	3
D	102 lbs	4.5
E	100 lbs	6

[1] United States Standards of grade have not been formulated for the rough rice variety No. 2702 (Nira).

The discount for rough rice of the above named varieties, with an estimated TOTAL YIELD of less than 100 pounds, shall be 6% of the base price, plus one-half of one percent of such price for each full pound of TOTAL YIELD below 100 pounds.

TABLE H.—*Discounts for rough rice*

For the Grade Factor

STAIN

The discount for STAINED rough rice shall be 3% of the base price, except that no discount may be claimed for STAINED rough rice if a discount is claimed for the grade factors MOISTURE, or MUDDY KERNELS, or MUD-LUMPS, or HEAT DAMAGED KERNELS, or MUSTY ODOR.

TABLE I.—*Discounts for rough rice*

For the Grade Factor

MUSTY ODOR

The discount for MUSTY rough rice shall be 5% of the base price, except that no discount may be claimed for MUSTY rough rice if a discount is claimed for the grade factors MOISTURE or HEAT DAMAGED KERNELS or STAIN.

TABLE J.—*Discounts for rough rice*

For the Grade Factor

MOISTURE

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Normal	14%	0
Damp	14.5%	0
Damp	14.6% to 15%, inc	3
Damp	15.1% to 15.5%, inc	6
Wet	15.6% to 16%, inc	8
Wet	16.1% to 17%, inc	12

The discount for rough rice containing MOISTURE in excess of 17% shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of MOISTURE in excess of 17%.

No discount may be claimed for MOISTURE if a discount is claimed for MUSTY ODOR or HEAT DAMAGED KERNELS or STAIN.

TABLE K.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (SEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	0
Seedy	2.0%	1

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Separable) shall be 1% of the base price, plus one-half of one percent of such price for each full one percent of WEED and/or GRASS SEEDS in excess of 2%.

TABLE L.—*Discounts for rough rice*

For the Grade Factor

WEED SEEDS (INSEPARABLE)

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Seedy	0.1%	0
Slightly Seedy	0.5%	5
Seedy	2.0%	12

The discount for rough rice containing over 2% of WEED and/or GRASS SEEDS (Inseparable) shall be 12% of the base price, plus one percent of such price for each full one-half of one percent of such inseparable seeds in excess of 2%.

TABLE M.—*Discounts for rough rice*

For the Grade Factor

CHALKY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Not Chalky	1.5%	0
Not Chalky	1.6% to 3% inc	1
Slightly Chalky	3.1% to 4.5% inc	2
Slightly Chalky	4.6% to 6% inc	3
Chalky	6.1% to 9% inc	4
Chalky	9.1% to 12% inc	5

The discount for rough rice containing over 12% CHALKY KERNELS shall be 5% of the base price, plus one-half of one percent of such price for each full one percent of CHALKY KERNELS in excess of 12%.

TABLE N.—*Discounts for rough rice*

For the Grade Factor

MUDDY KERNELS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	1%	0
Slightly Muddy	2%	3
Muddy	5%	8

The discount for rough rice containing in excess of 5% MUDDY KERNELS shall be 8% of the base price, plus 0.1% of such price for each full one percent of MUDDY KERNELS in excess of 5%.

TABLE O.—*Discounts for rough rice*

For the Grade Factor

MUD LUMPS

United States Grade (Special Designation)	Percentage allowed for grade	Discount from base price
		Per cent
Clear	0.1%	0
Slightly Muddy	0.5%	3
Muddy	2.0%	8

The discount for rough rice containing in excess of 2% MUD LUMPS shall be 8% of the base price, plus 0.1% of such price for each 0.1% of MUD LUMPS in excess of 2%.

EXHIBIT A—(ARTICLE XI OF MARKETING AGREEMENT)

ARTICLE XI—MILLERS ADVISORY COUNCIL

SECTION 1. A Millers Advisory Council shall be established consisting of members who shall be selected in accordance with the provisions of this article and who shall serve until they are removed or resign. The initial members shall be selected within ten days after notice from the Rice Section. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 2. One member, and each of his successors, shall be selected by each miller who is signatory to this Agreement and/or is licensed by any license supplementary hereto issued pursuant to section 8 (3) of the Act, by filing with the Secretary an instrument duly executed by such miller designating the individual whom he has selected. A member, or his successor, may be removed by the miller which designated him. Such removal shall become effective upon the filing with the Secretary of an instrument duly executed by such miller or upon a date specified in any such instrument, whichever is later.

SEC. 3. Each miller selecting a member of the Millers Advisory Council may, in the same manner, at any time, select an alternate, to act in the place and stead of such member (a) in his absence, and/or (b) in the event of his removal, resignation, or disqualification, until a successor for his unexpired term has been selected.

SEC. 4. Any question as to whom a miller has selected as a member or alternate shall be submitted to the Rice Section, and its decision shall be final and conclusive.

SEC. 5. Members of the Millers Advisory Council shall serve without compensation and shall not be entitled to expenses although necessarily incurred in the performance of their duties hereunder.

SEC. 6. A member of the Millers Advisory Council shall have only one vote as to each matter coming before said Council except as provided for the selection of members of the Millers Committee.

SEC. 7. The Rice Section shall call an organization meeting of the Millers Advisory Council at such time and place as the Rice Section may designate.

SEC. 8. The Millers Advisory Council shall have the following duties and powers:

(*a*) To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

(*c*) To select, as provided in article XII, the members of the Millers Committee.

(*d*) To advise with the Millers Committee.

(*e*) To act as an intermediary between the Millers Committee and the millers.

(*f*) To propose a list of banks to the Millers Committee.

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

SEC. 9. A member of the Millers Advisory Council shall be disqualified from voting in the selection of members of the Millers Committee, if the miller who selected said member of the Millers Advisory Council has failed to file with the Rice Section, on and in accordance with a form approved by the Rice Section, a statement of the volume of rough rice milled or exported by such miller during the three crop years last past.

EXHIBIT B—(ARTICLE XII OF MARKETING AGREEMENT)

ARTICLE XII—MILLERS COMMITTEE

SECTION 1. The name of the Control Committee as constituted under the Marketing Agreement for Southern Rice Milling Industry, dated October 13, 1933, and/or this Agreement prior to its amendment is hereby changed to the "Millers Committee".

SEC. 2. The present members of said Millers Committee shall continue in office until the selection of their successors whereupon they shall cease to hold office.

SEC. 3. The Millers Committee shall consist of seven members who, except as provided in section 2, shall be selected in accordance with the provisions of this article and shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected. The initial members hereafter selected shall be selected at the initial meeting of the Millers Advisory Council and their respective successors (other than those selected to fill vacancies) shall be selected annually thereafter at least thirty days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

SEC. 4. From a list of nominees submitted by members of the Millers Advisory Council, all seven members (and each of their successors) of the Millers Committee shall be selected in the following manner: Each member (not disqualified) of the Millers Advisory Council shall be entitled to a vote equal to seven times the weight which the volume of rough rice milled or exported by the miller who selected him during the three preceding crop years bears to the total volume of rough rice milled or exported by all millers during said years. The vote of any member of the Millers Advisory Council may be cast for one nominee or distributed among two or more nominees as such member shall prefer. The seven nominees receiving the largest number of votes shall be the members of the Millers Committee.

SEC. 5. Upon the selection (other than to fill a vacancy) of any members of the Millers Committee, the secretary of the Millers Advisory Council shall certify to the Secretary, the name and address of each such member, and the date or dates of their selection. The members so certified to the Secretary shall be deemed for all purposes to be the duly selected members of the Millers Committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable Administrative Orders issued by the Secretary.

SEC. 6. To fill any vacancy occasioned by the removal, resignation, demise or disqualification of any member of the Millers Committee, a successor for his unexpired term shall be selected by the Secretary of Agriculture.

SEC. 7. Upon the selection of seven of its members, the Millers Committee may organize and commence to function; *Provided, however*, That:

(*a*) This provision shall not affect or supersede any other provision in this Agreement requiring a minimum vote with respect to specified action to be taken by the Millers Committee; and

(*b*) The Millers Committee shall not perform any of its duties or powers herein granted while there are more than two vacancies in its membership.

SEC. 8. The members of the Millers Committee or of any other committee created hereunder (including successors, alternates, or persons selected by the Secretary), and any agent or employee appointed or employed by the Millers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Millers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at anytime, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 9. Members of the Millers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 10. The powers and duties of the Millers Committee shall be the following:

(a) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(b) To supervise the performance of this Agreement and to act as an intermediary between the Secretary and the millers.

(c) To appoint such employees and/or agents as it deems necessary and to determine the salaries and define the duties of such employees and/or agents.

(d) To appoint and define the duties of additional committees or sub-committees to assist it in the performance of any of its duties and functions hereunder.

(e) To investigate suspected violations of this Agreement, and, after due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which do not concern the interests of producers.

(f) To act as provided in, and subject to the provisions of, article XIII, (entitled "Producers Committee and Millers Committee").

(g) To pay such expenses of the Producers Committee and/or the Millers Advisory Council as may be included within a budget or budgets approved by the Secretary.

(h) The Millers Committee shall keep books and records which will fully reflect its receipts, disbursements and financial transactions. The accounting system and fiscal procedure of the Millers Committee shall be as prescribed or approved by the Secretary, and shall be subject to audit by the Secretary at such times as he shall desire.

(i) To cooperate with the Secretary and the Producers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

SEC. 11. The contracting millers agree to abide by the decision of the Millers Committee in any question, dispute, or complaint unless an appeal in writing is taken to the Secretary pursuant to section 3 of article XIII and if such appeal is taken to abide by the decision of the Secretary thereon. Pending the disposition by the Secretary of any such appeal, the parties involved shall abide by the decision rendered by the Millers Committee unless the Secretary shall rule otherwise pending such disposition, provided, that in the case of any decision requiring any payment by a miller, such miller, in case of appeal to the Secretary, shall not be required to make any such payment until such appeal is decided by the Secretary.

SEC. 12. The members of said Control Committee are hereby authorized and directed to assign, transfer and deliver to the members of the Millers Committee and their successors any and all property (whether real, personal or mixed) and any and all books and records which are in their possession or under their control as such committee, and any and all claims which are accrued or which may hereafter accrue to them as such committee. In case of any dispute involving the Control Committee and/or the Millers Committee and/or one or more members of either, the matter shall be referred to the Secretary whose decision shall be final and conclusive.

SEC. 13. It being difficult to ascertain the amount of damage which will be sustained by the parties signatory hereto by reason of the violation of any of the terms hereof by any one of the contracting millers, it is agreed

(a) That for each violation of any of the terms of this Agreement pertaining to the sale of clean rice, the offending contracting miller shall, upon demand, pay to the Millers Committee a sum which will represent $1.00 upon each pocket of rice involved in the offending transaction, and

(b) That for each violation of any of the terms of this Agreement pertaining to the purchase or sale of rough rice, the offending contracting miller shall, upon

demand, pay to the Millers Committee a sum which will represent 50 cents upon each barrel of rough rice involved in the offending transaction.

(*c*) Any and all payments pursuant to subsection 13 (*a*) shall become part of Marketing Fund No. 2.

(*d*) Any and all payments pursuant to subsection 13 (*b*) shall be used to pay to any producer involved in such transaction any amount by which the purchase price was below the applicable minimum price, and any excess shall become part of Marketing Fund No. 2.

EXHIBIT C (ARTICLE XIV OF MARKETING AGREEMENT)

ARTICLE XIV—PRODUCERS COMMITTEE

SECTION 1. A Producers Committee shall be established consisting of seven members who and whose successors (and whose alternates, if any) shall be selected by the Secretary and who shall serve until July 1 of the year following the date of their respective selections and until their respective successors are selected.

SEC. 2. Each alternate, if any, shall act in the place and stead of the member for whom he is selected to act as alternate (*a*) in his absence, and/or (*b*) in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

SEC. 3. Upon the selection of all of its members, the Producers Committee may organize and commence to function; *Provided, however*, That the Producers Committee shall not perform any of its duties or powers herein granted while there are more than four vacancies in its membership.

SEC. 4. The members of the Producers Committee or of any other committee created hereunder (including successors or alternates), and any agent or employee appointed or employed by the Producers Committee or by any other committee, shall be subject to removal by the Secretary at any time with or without cause. Each and every order, regulation, decision, determination or other act of the Producers Committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SEC. 5. Members of the Producers Committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

SEC. 6. The powers and duties of the Producers Committee shall be the following:

(*a*) To elect a Chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

(*b*) To act as an intermediary between the Secretary and the producers, and between the millers and the producers.

(*c*) To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties or functions hereunder.

(*d*) To investigate suspected violations of this Agreement, if a grower is a party to such violations, and to report to the Secretary any violations it believes to have occurred, together with its recommendations, if any.

(*e*) After due notice and opportunity for hearing, to decide, subject to appeal to the Secretary, all questions, disputes and complaints which arise in connection with the performance of this Agreement and which concern only the interests of the producers.

(*f*) To act as provided in, and subject to the provisions of, article XIII (entitled "Producers Committee and Millers Committee").

(*g*) From time to time, to submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary shall prescribe, an itemized budget of its estimated expenses; and, upon the approval by the Secretary of such budget, to incur such reasonable obligations and to make such reasonable expenditures as may be necessary and proper and as are included within such budget.

(*h*) To cooperate with the Secretary and the Millers Committee and to negotiate and confer with representatives of importers with respect to the formulation of a Marketing Agreement for importers and/or amendments to this Agreement concerning importers.

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